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**DATA USERS WORKSHOP**

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**Present:**

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Brian Reaves, Ph.D., BJS  
Brian Forst, Ph.D., American University  
Carl Peed, U.S. Department of Justice  
Tom Frazier, Major Cities Chiefs Association  
Gerard Ramker, Ph.D., BJS  
Joan Weiss, Justice Research and Statistics Association  
Lynn Addington, J.D., Ph.D., American University  
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Jacquelyn C. Campbell, Ph.D., RN, Johns Hopkins University  
Thomas Cohen, J.D., Ph.D., BJS  
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Richard Schauffler, National Center for State Courts  
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1 Welcome by BJS and COPAFS

2 **Mr. Sedgwick:** Good morning. I want to start off. I'm Jeff Sedgwick.  
3 I'm the Director of the Bureau of Justice Statistics, and I wanted to begin  
4 by thanking you all for taking time out of your busy schedules to be here  
5 today.

6 For BJS, today is an extremely important day. I wanted to share  
7 with you all a little bit about the context of today's activity, and how it  
8 fits into a larger program at BJS, and try to do that in the impossible task  
9 of about five minutes. It's impossible because I'm a professor, and we  
10 speak in 50-minute sound bites.

11 One of the things that we're doing at BJS right now is what we  
12 are characterizing internally as trying to put in place a culture of  
13 continuous improvement, and a big part of that is changing the way that  
14 we think about what we do, and particularly the way we relate to the  
15 external environment.

16 Kind of traditionally in statistical agencies, you design surveys,  
17 you put them out in the field, you collect data, you get the data back, you  
18 clean it, you look at it, you decide what kind of a report you can write,  
19 you write a report, you release it, and you hope to high heavens that  
20 somebody reads it—that it has some impact—that somebody out there  
21 comes to love it.

22 One of the things that we're doing in BJS now is we are kind of  
23 reversing that process. For those of you who have spent any time in  
24 education theory, you may have run across a book called Understanding  
25 by Design, which now every member of BJS has a copy of sitting on  
26 their desk, and essentially the kind of point of that book is simply the  
27 way in which academicians design curricula, and to a considerable  
28 extent, the traditional way statisticians design statistical programs and  
29 publications and dissemination is, in fact, exactly backwards, that what  
30 we should be doing is beginning with an understanding of what the  
31 information needs are of our audience. That is, we should be asking the  
32 question of people like you: what is it that you would like to do that you  
33 currently can't do because you're lacking some crucial piece of  
34 information?

35 Then once we know that, we can ask ourselves the question,  
36 what type of a product would provide that type of information to you to  
37 empower you to do the things that you want and need to do? And then,  
38 once we know what the product looks like, we would then know what  
39 kind of analysis we need to do, and once we knew what the analysis was,  
40 we'd know what kind of data we'd need to do that kind of analysis.

41 Once we knew what the data is, then we'd know what the  
42 survey should look like. So in fact, we should be kind of approaching the  
43 process pretty much 180 degrees in the opposite direction of the way we  
44 traditionally do things. So, you are all here at the inauguration of kind of  
45 a spinning an agency 180 degrees on its axis, and getting it to think  
46 backwards. So, help us do that, but I promise you I will not speak  
47 backwards to you today.

1 The other piece of this whole process of kind of embedding a  
2 culture of continuous improvement in BJS, and kind of changing the way  
3 that we relate to the external world and think about what we do, we also  
4 have scattered among you a number of people who are currently hard at  
5 work halfway through a two-year project by the National Academy of  
6 Sciences, and the Committee on National Statistics, and the Committee  
7 on Law and Justice, where I've asked them to do a comprehensive review  
8 of the BJS program.

9 We are pretty much victims of our own success in the sense that  
10 everything that we seem to have done in the past people like and expect  
11 us to do again, people expect us to continue to tackle new problems, and  
12 nobody tells us that any of the things that we've done in the past are no  
13 longer necessary.

14 So what we find is increasing responsibilities, and increasing  
15 expectations of the issues that we'll cover with our statistical series  
16 without, of course, a parallel increase in our resources to do it.

17 So, we've asked the Committee on National Statistics and the  
18 Committee on Law and Justice jointly to do an evaluation of BJS that, to  
19 speak like an economist for a moment, fundamentally boils down to the  
20 following question: is the value of the least important thing that BJS does  
21 greater than the value of the most important thing that BJS doesn't do?

22 And we're looking for your input on that today. So, in a  
23 nutshell, that's why you're here. First, we need to know what your  
24 information needs are so that we can better understand what our  
25 statistical series should look like, and what our product should look like,  
26 and second of all, we want to know from you, are we doing the right  
27 things? How do you use our data? How would like to be able to use our  
28 data? What kinds of data should we be thinking about collecting, and  
29 then, not coincidentally, what forms should we disseminate it in? What  
30 should a BJS product look like?

31 Now, the other thing I'll say to you, and then I promise I will  
32 stop is, you're not all alike quite deliberately. First of all, we've divided  
33 up the audience between three different focus areas for BJS in the coming  
34 year.

35 One is law enforcement, one is adjudication, and one is  
36 victimization. Okay? Within each one of those communities of interest,  
37 we've very carefully tried to pick people who are researchers,  
38 policymakers, practitioners, advocates, and we've also added in people  
39 that we think of as gatekeepers—reference librarians, media specialists,  
40 people who stand between us and our audiences.

41 Our point here is we want to get a finely textured sense of what  
42 the various stakeholder communities are that we serve, and we want to  
43 understand the needs each of you have, and our expectation is your needs  
44 are going to be quite different.

45 So what we're looking for at the end of this whole process is a  
46 rich agenda for us to go back and think through as we try to put in place,  
47 as I said to begin with, this culture of continuous improvement.

48 So, you're terribly important to us today, and not just today, but  
49 every day. And I hope this just begins a process of conversation between

1 you and us, and at the end of this meeting, you feel like you know who to  
2 call when you've got an idea or you have a need that BJS might be able  
3 to respond to, and that you don't leave the room today with any thoughts  
4 unspoken, and any questions unasked, and that down the road in the  
5 future, any time you've got a question or a thought, you feel comfortable  
6 picking up the phone and getting in touch with us.

7 So with that, I'm going to turn it over to Ed Spar, who has a few  
8 comments, and wish you the very best today. I'm looking forward to it,  
9 and I hope you are, too.

10 So thank you.

11 **Mr. Spar:** Hi. I am Ed Spar, the Executive Director of the Council of  
12 Professional Associations on Federal Statistics, and I always have to take  
13 a deep breath after I say that. From here on out, it's COPAFS. It's been a  
14 pleasure working to put this seminar on, and on behalf of the Council, of  
15 course, welcome.

16 I want to thank a couple of people who've worked very hard to  
17 get this going. My own assistant, Leanne Sklar, and three people from  
18 BJS, without whom this couldn't have taken place: Josephine Palma,  
19 Patrick Campbell, and Maureen Henneberg. Thank you, all of you, for  
20 making this happen.

21 So, with that, allow me to turn the program over to Brian  
22 Reaves, statistician from the Bureau of Justice Statistics, who will  
23 introduce our first speaker.

24 Thank you all.

25 ()

26  
27 **Mr. Reaves:** Thanks, Ed. I've been with the Bureau of Justice Statistics  
28 for about 20 years or so now, and despite that lengthy tenure, I've never  
29 had a chance to participate in anything quite like this. So I'm really  
30 looking forward to it. I expect to learn a lot, and I just want to personally  
31 thank everyone for volunteering your time as we try to explore new  
32 directions for our data collections, and our analytical efforts at BJS.

33 This morning, we begin in the area of law enforcement, and we  
34 have a distinguished panel today. We'll start with our presentation by  
35 Brian Forst, who is Professor of Justice, Law and Society at American  
36 University. He's been there since 1992.

37 Previously, he served as Director of Research at the Institute for  
38 Law and Social Research in the Police Foundation, and he was also a  
39 faculty member at George Washington University.

40 In 2006, Mr. Forst wrote *Errors of Justice, Nature Sources and*  
41 *Remedies*, won the Book of The Year Award from the Academy of  
42 Criminal Justice Sciences.

43 He has also published notable books on terrorism, including  
44 *Terrorism, Crime and Public Policy*, which will be published this year.  
45 He also, in the spring of 2009, will have another book published,

1 Criminologist on Terrorism and Homeland Security. That's along with  
2 James Lynch and Jack Greene.

3 His current research and teaching focuses on justice, policy,  
4 terrorism, errors of justice, and research methods. He is a member of the  
5 American University Faculty Senate, and he chairs the Department of  
6 Justice Law and Society's Doctoral Program. He's also a voting member  
7 of the District of Columbia Sentencing Commission.

8 Mr. Forst will present his paper today on Police Transparency:  
9 National Information Needs on Law Enforcement. He will have about 30  
10 minutes to present that, and then we'll have two discussants to discuss  
11 the presentation.

12 Carl Peed and Tom Frazier are our discussants. I'll give you a  
13 brief bio on them, as well, so we can move from the paper right into the  
14 discussion.

15 The first discussant, Carl Peed, was appointed by Attorney  
16 General John Ashcroft in 2001 to head the Justice Department's Office of  
17 Community Oriented Policing Services, also known as the COPS Office.  
18 Before he joined the COPS Office, Director Peed was Director of the  
19 Virginia Department of Juvenile Justice. Prior to that, from 1990 to  
20 1999, he was the Sheriff of Fairfax County, Virginia, where he gained  
21 national recognition for developing model policies and procedures in  
22 criminal justice administration.

23 During his tenure as sheriff, Director Peed was instrumental in  
24 the advancement of new technologies to the criminal justice system.  
25 Prior to that, he served as chief deputy in the Sheriff's Office, and he  
26 developed several national award-winning programs during his 20-year  
27 career there, and he also has served as a consultant for the National  
28 Sheriffs' Association, the American Correctional Association, and the  
29 Justice Department.

30 Our second discussant will be Tom Frazier. He is President of  
31 Frazier Group, LLC, a consortium of America's leading law enforcement  
32 and homeland security leaders.

33 He also serves as Executive Director of the Major Cities Police  
34 Chiefs Association, which represents the chiefs of the 64 largest police  
35 agencies in the U.S. and Canada. Prior to creation of the Frazier Group,  
36 he was also a director of the COPS Office, he preceded Director Peed,  
37 and prior to that, he was the Police Commissioner for the City of  
38 Baltimore. While at the Baltimore Police Department as commissioner,  
39 he developed signature programs, including 3-1-1, a department  
40 reorganization, and CrimeStat.

41 Prior to that, he served in every rank through deputy chief in the  
42 San Jose Police Department. He's also served as President of the Board  
43 of Directors of the Police Executive Research Forum, and was Chairman  
44 of the Board of the Baltimore-Washington High-Intensity Drug  
45 Trafficking Area Program. He currently serves on a number of advisory  
46 boards to the Department of Justice, and the Department of Homeland  
47 Security.

48 So, I think we have an outstanding panel of law enforcement  
49 experts for you, and I'm going to turn it over to Brian Forst now for his

1 presentation.

## 2 **Session 1: Law Enforcement**

### 3 **Improving Police Effectiveness and Transparency: National** 4 **Information Needs on Law Enforcement**

5 **Mr. Forst:** Good morning. I wish first to thank Jeff Sedgwick and his  
6 staff and COPAFS for organizing this workshop and for bringing  
7 together all of you, and to BJS staff members Patrick Campbell, Matthew  
8 Durose, Maureen Henneberg, Mark Motivans, and Brian Reaves here for  
9 their help in fact checking a draft of this paper.

10 Helping law enforcement is a critical business, and I look  
11 forward to working with you all this morning to see how BJS can  
12 contribute even more than it already has to serving the nation's law  
13 enforcement community with useful information.

14 I'd like to begin with a story, which is probably apocryphal, but  
15 which nonetheless makes a useful point about our conventional way of  
16 measuring crime.

17 The story is about Nobel Laureate Nils Bohr when he was  
18 taking a physics examination at the University of Copenhagen in 1905.  
19 He was asked, "how would you measure the height of a building using a  
20 barometer?" He's alleged to have given this answer. "Well, I guess you  
21 want me to say that you could measure the air pressure at the top and the  
22 bottom of the building and, knowing that difference and how air pressure  
23 diminishes with altitude, you could estimate the height of the building,  
24 but given the likely errors in measurement using such an approach, that  
25 would be a terribly inaccurate way to do it, so I propose the following  
26 options, all of which make use of the barometer and are surely more  
27 accurate.

28 "First, you could wait for the sun to come out and measure the  
29 length of the shadow cast by the building and by the barometer, and then  
30 measure the length of the barometer, and deduce the height of the  
31 building knowing that the ratios are going to be the same for the two  
32 objects. Or you could walk to the top of the building with the barometer  
33 and a stop watch, drop the barometer, time how long it takes to land on  
34 the ground and then, knowing  $S$  equals one-half  $GT$  squared 32 feet per  
35 second, you could calculate more accurately the height of the building.  
36 Or you could tie the barometer to a string, walk up to the top of the  
37 building and let it down until it touches the ground, come back, measure  
38 the length of the string, add the length of the barometer, and that would  
39 give you an accurate measure of the building. Or, if the building has an  
40 outside fire escape, you could walk up the fire escape and measure the  
41 number of barometer lengths to the top of the building, and then multiply  
42 that by the length of the barometer, and that would give you an estimate  
43 of the height of the building. But the quickest way would be to go to the  
44 building's engineer and say, if I give you this shiny new barometer, will  
45 you tell me the height of this building?"

46 Well, imagine if Professor Bohr had offered the building  
47 engineer the latest copy of the UCR instead of a shiny new barometer.  
48 "Deal or No Deal?"

49 Now, especially in this day of extraordinary advances in the

1 technologies of information gathering, information processing, analysis  
2 and instant dissemination, I'm holding in my hand a flash drive that has  
3 memory on it—you could put encyclopedias on here. That speaks to the  
4 extraordinary advances we've made over the last 20 or 30 years.

5 It seems a shame that we do not know more than we do, given  
6 all of that, about how to reduce crime.

7 Law enforcement today is more transparent and more effective,  
8 too, because of these technologies. It's more transparent, also, because of  
9 a more aggressive and intrusive electronic and print media industry. The  
10 police today are surely influenced more than ever before by the prospect  
11 that serious lapses in their behavior could air on the evening news, and  
12 policing is more transparent, as well, because of new systems of  
13 accountability, such as COMPSTAT.

14 Policing is also more effective because of tactical uses of the  
15 new information and communication technologies, such as laptop  
16 computers with geocoded information about hot spots, and the  
17 availability of new technologies for surveillance (for example, acoustic  
18 technology to pinpoint the origin of gunfire) and in forensic analysis.

19 But we are not where we could be. One of my heroes and  
20 mentors, Hans Zeisel, wrote this 37 years ago: "Almost useless." Hans  
21 was alluding here both to our measurement of crime, and to our  
22 understanding of how to reduce it.

23 Policing is clearly more effective and more transparent in many  
24 ways than in 1971. This is especially important because of the  
25 extraordinary mandate of police in society. The police have a monopoly  
26 on the authority to use non-negotiably coercive force, as Agan Bitner  
27 observed in 1970, which lends special significance to the values of  
28 transparency and legitimacy. But service delivery today is more  
29 transparent in virtually every sector of our society, and more effective,  
30 too, because of the technology revolution, and improved systems of  
31 accountability.

32 While the police have been successful in exploiting technology  
33 in its tactical operations, it's clear that, over the past 20 years or so, gains  
34 in knowledge about what works in policing, which were quite substantial  
35 during the 1970s and 1980s, have not kept pace with gains in information  
36 technology.

37 Let's review just a few of the highlights from the 1970s and '80s  
38 that had an impact on policing, making it not only more efficient, but also  
39 much safer. It was learned in the study of San Diego by the Police  
40 Foundation 35 years ago or so, that two cops were more likely to get into  
41 trouble—much more likely than one; more than twice as likely.

42 All of this research was done under support from the Federal  
43 Department of Justice, the National Institute of Justice and BJS, and four  
44 other agencies. While information technologies have made police  
45 operations more effective than ever before, and undoubtedly contributed  
46 to the decline in serious crime since 1990, the uses of data for research  
47 and policy assessment purposes to permit a more thorough understanding  
48 of relationships between the inputs of policing and police performance in  
49 various settings nationwide have been exceedingly limited.

1 We really don't have much more systematic evidence about  
2 what works in policing today than we did in the mid 1980s. The words of  
3 Hans Zeisel cited a moment ago still resonate nearly 40 years later.

4 Consider, in particular, the fundamental role of the police as the  
5 official front line agents to protect society against crime. Now, most of us  
6 are familiar with the elaborate diagrams of the criminal justice funnel  
7 depicting the channeling of crimes through the criminal justice system.  
8 You've all seen this in any textbook of criminal justice, and at many  
9 presentations that you go, you see this. But when numbers are attached to  
10 the diagram, it becomes clear that this is much more of a sieve than a  
11 funnel.

12 The UCR reports about 8 to 10 million felony offenses  
13 annually—about half of which go unreported. So, we have something in  
14 the neighborhood of 15 to 20 million felony victimizations annually, with  
15 just one and a half to two million arrests annually, and about half of those  
16 end in conviction.

17 The police are precisely in the middle of this extraordinarily  
18 leaky sieve. Yet we have little by way of reliable empirical evidence on  
19 the relationships between police operations, tactics, and policies on the  
20 one hand, and the leakages at each stage on the other—from  
21 victimization to reporting, to recording, to arrest and conviction—which  
22 the police could conceivably do more to close.

23 Now thanks to BJS, we do know a good deal more from the  
24 NCVS than we used to know about why so many serious crimes still go  
25 unreported. But we stand to learn much more still about what the police  
26 could do to reduce victimization levels and to increase the reporting rate  
27 further with reliable information about the characteristics of the cases  
28 that end in arrest and those that do not, together with reliable information  
29 about what the police do and fail to do in each case.

30 We could also learn more about why so many reported felonies  
31 fail to end in arrest, and what law enforcement officials could do to help  
32 the prosecutor convict more culpable felony offenders with stronger  
33 evidence and witnesses.

34 Some of these relationships are likely to hold more generally  
35 across the major offense categories, and the various stages from  
36 victimization to conviction than others, and it's extremely important to  
37 know how these various factors interact with one another.

38 Today's world of information and the ready availability of  
39 statistical tools to analyze the data make this entirely feasible. Such  
40 knowledge could help us to know more about what the police could do to  
41 raise the rate at which victimizations end in conviction from well below  
42 10 percent to perhaps 20 percent or more.

43 BJS can help by providing statistical indicators of lapses at each  
44 of these stages, and as datasets can be exploited creatively for another  
45 purpose, to permit in-depth research about what works to reduce the  
46 leakages.

47 While research is more clearly in the domain of NIJ rather than  
48 that of BJS, the roles do occasionally overlap, and BJS should encourage  
49 research uses of data it produces for other purposes. A modest degree of

1 competition between NIJ and BJS in this domain of natural overlap is  
2 probably a good thing.

3 Now back to the sieve that we call the criminal justice system.  
4 These are not just leaks; they are lapses of justice. They are costly, and  
5 they demand more attention than we've given them.

6 Police lose legitimacy when they fail to bring the vast majority  
7 of serious offenders to justice. Lapses in justice of both kinds, failures to  
8 arrest and wrongful arrests, are surely more pervasive in the  
9 neighborhoods and communities plagued with chronically high crime  
10 rates, if only because the concentration of crimes is so much greater in  
11 those places.

12 Affluent communities not only can lavish more resources on  
13 their police departments, but they can and often do supplement those  
14 resources with private security services.

15 The media tend to focus more these days on coeds missing in  
16 the Caribbean than on inner city crime, but inner city residents are all too  
17 familiar with lapses of justice in their neighborhoods, in terms of both  
18 wrongful arrests, and failures to convict.

19 This is not a criticism of the police. The law enforcement  
20 community generally does the best it can with what it has, and it does so  
21 usually with commitment and professionalism, often against great odds,  
22 and in the face of peril.

23 We would not be better off if all victimizations ended in  
24 conviction. Some crimes, even some felonies, are better resolved through  
25 informal social sanctions than through formal criminal sanctions, but I  
26 have yet to hear a convincing argument for how justice is done in a  
27 system in which just 5 to 10 percent of all felony victimizations end in  
28 conviction.

29 This is a criticism of the sharp, avoidable disparity between how  
30 little we know about relationships between aspects of police operations  
31 and case leakages, and how much we stand to learn given today's  
32 advanced information and analytic technologies.

33 Do affluent areas experience the same levels of leakages at each  
34 stage as poor ones? How different are they? Do the leakages tend to vary  
35 with variation in policing practices? Which ones? And under what  
36 circumstances?

37 The opportunities are vast for federal, state and local officials to  
38 learn more about the leakages at each stage, and how they vary across  
39 communities. Much greater efforts are made today to understand service  
40 lapses elsewhere, especially in the private sector, typically in settings  
41 where the stakes and social costs are considerably smaller.

42 Now, several people have stepped up and offered suggestions as  
43 to how we can begin to improve matters. One concern relates to the joke  
44 about the barometer and the Uniform Crime Reports. Rick Rosenfeld, for  
45 one, has suggested that the UCR is much less timely than information  
46 obtained from the websites of individual police departments, and the FBI  
47 is not as responsive to the evaluation of law enforcement policy and  
48 related research questions as BJS would be if it managed the UCR.

1           The Bureau of Justice Statistics supports the law enforcement  
2 community today by acquiring, organizing, updating and disseminating  
3 information, with the aim of serving policymakers, practitioners, and  
4 researchers. This is consistent with the larger BJS mission statement.

5           Notice that analysis is one of the items here which, again,  
6 speaks to the overlap between NIJ and BJS.

7           There is some overlap with what the NIJ does in the production  
8 and analysis of data. But in law enforcement, as in other aspects of the  
9 criminal justice system, the primary division of labor is that BJS focuses  
10 more on the data and on the nation as a whole, while NIJ emphasizes  
11 research, typically on single jurisdictions or handfuls of jurisdictions,  
12 rather than for the United States as an entity.

13           BJS serves the law enforcement community in two broad areas,  
14 federal law enforcement and state-local policing. In federal law  
15 enforcement, BJS tracks suspects in initiated investigations, persons  
16 arrested and booked, and suspects in concluded investigations. It  
17 compiles aggregate statistics in its compendium of federal justice  
18 statistics, and it reorganizes this in a 10-year time series in the federal  
19 criminal justice trends.

20           Now, BJS does more on the state and local level law  
21 enforcement, including its Law Enforcement Management and  
22 Administrative Statistics (or LEMAS) Series and its Source Book of  
23 Criminal Justice Statistics, particularly Section 4 on Arrests, Clearances,  
24 and Seizures.

25           The LEMAS Information, published every 3 or 4 years,  
26 provides statistics from all 3,000 (or more) state and local law  
27 enforcement agencies employing at least a hundred sworn officers, plus a  
28 representative sample of smaller agencies, including information on  
29 personnel; budgets; expenditures and pay; operations, including patrol  
30 and investigation; equipment, including computers and information  
31 systems; and policies and programs, including information about  
32 community policing and special operations and specialty unit programs.

33           LEMAS provides useful information about current operating  
34 norms for law enforcement agencies of particular sizes and settings, and  
35 data with which policy analysts and scholars can investigate relationships  
36 between the inputs of law enforcement and performance measures for  
37 agencies in various categories.

38           BJS also manages numerous datasets, including the census of  
39 state and local law enforcement agencies, which includes information on  
40 the number of sworn and civilian personnel by state and type of agency,  
41 and the Police-Public Contact Survey, which gives detailed information  
42 on salient aspects of face-to-face contacts between the police and the  
43 public, including the reason for an outcome of the contact.

44           The PPCS, Police-Public Contact Survey, enables BJS to  
45 estimate the likelihood that a driver will be pulled over in a traffic stop,  
46 and the percentage of all contacts that involve the use of force by the  
47 police. BJS makes this information available through its website.

48           So, the central question before us this morning is, how might  
49 BJS do more for law enforcement? Well, to begin with, the law

1 enforcement share of the annual BJS budget is in the neighborhood of 2  
2 to 5 million dollars, and this doesn't go very far in today's world of oil at  
3 \$100 a barrel.

4 Consider the \$59 million Bill and Melinda Gates Foundation. It  
5 earns over 2 million dollars in interest every 4 hours. Think about that.  
6 The entire BJS budget, 4 hours.

7 Given that crime costs the nation about a trillion dollars  
8 annually, 2 to 5 million dollars is pretty puny. Consider this: a 1 percent  
9 reduction in crime amounts to benefits in the neighborhood of \$10  
10 billion. So a strong case can be made to go to the Bill and Melinda Gates  
11 Foundation if the federal government doesn't come through.

12 As we work to increase the BJS budget, however, we can think  
13 about how this 2 to 5 million dollar "bit of change" might be better spent.  
14 The problem with allocating a budget of any particular size to a set of  
15 competing demands is one that is commonly known as the knapsack  
16 problem by operations research analysts and economists, as it is  
17 confronted by anyone who's ever puzzled over how much to carry on an  
18 overnight trek in the woods.

19 So, this is (stated too simply) the problem that BJS confronts.  
20 For BJS, as with other federal statistics agencies, the knapsack problem is  
21 complicated by several factors.

22 The first of these is the identification of users, as Jeff noted in  
23 his opening remarks, each of whom might perceive different values, and  
24 incur different costs for each item in the knapsack. These perceptions are  
25 likely to vary, both across various classes of users, and within each class.

26 The 1971 President's Commission on Federal Statistics (which  
27 provided the Hans Zeisel quote) identified users of federal statistics, and  
28 their list is easily adapted to the law enforcement community as follows.

29 How much weight should be attached to each of these different  
30 user groups? Practitioners, recognizing that all of them ultimately serve  
31 the bottom line here—literally the bottom line—practitioners tend to be  
32 more interested in the process issues and aspects of service delivery  
33 inputs, while politicians and the general public tend to be more interested  
34 in outcomes and transparency.

35 Evaluators and researchers typically focus on relationships  
36 between inputs and outputs. Sorting these issues can begin with surveys  
37 of each class of user to establish their information priorities, and the  
38 worth of each item to each user.

39 Establishing the costs and values of each item in the BJS  
40 information portfolio or knapsack is more difficult given that they vary  
41 across users and given the complications associated with  
42 complementarities and redundancies among the items in the portfolio.  
43 The ultimate recipient is the general public but citizens are rarely aware  
44 of how they benefit from better policing practices that have been based  
45 on BJS information.

46 What, then, are the primary candidate items for the BJS  
47 knapsack? Just as we have categories of items to put in a knapsack to  
48 support a 5-day trek in the woods: we have food, we have clothing, we

1 have a tent, we have a sleeping bag, we have tools, and so on, so do we  
2 have categories of items that are candidates for the BJS law enforcement  
3 portfolio.

4 The first grouping is by dichotomy. So, we have federal versus  
5 state and local operations, and this is already a major dichotomy within  
6 the BJS law enforcement holdings.

7 There are crime and non-crime aspects of policing. We're  
8 interested in both prevention and response. We're interested in  
9 information that would support, not only the public law enforcement, but  
10 also private security, and there is now a European Source Book which  
11 compares nations of Europe. We could, presumably, assemble  
12 comparable data for the United States, and compare U.S. operations in  
13 law enforcement with law enforcement operations elsewhere throughout  
14 the world.

15 Another grouping is by process. So, we could begin with the  
16 leakage question. What are the levels, and then, what are the leakages  
17 between levels?

18 We have the LEMAS type of data, which are really quite good  
19 as they stand. I've not heard a lot of complaints about LEMAS, but I'm  
20 not in that loop, so if some of you have complaints we can hear about  
21 them this morning.

22 And we also have this emergence of systems of accountability,  
23 like COMPSTAT, which would seem, on its face, to be potentially useful  
24 to bring together and analyze.

25 And we also have the ubiquitous miscellaneous, special-interest  
26 offenses, drugs, guns, hate crimes, questions about homicide clearances  
27 and cold cases, and, of course, homeland security and terrorism.  
28 Misbehavior is a big, very difficult issue to get into because transparency  
29 on that is, for obvious reasons, hard to bring forth.

30 Questions of race, including profiling and minority employment,  
31 technology for crime prevention investigation, and emerging issues, like  
32 human trafficking and so on.

33 Now, several of these items are already in the BJS knapsack.  
34 Some are available in the BJS databases, but not readily accessible to  
35 prospective users.

36 One solution might be to permit users to drill down from  
37 aggregates they see in BJS reports to more finely-tuned categories of  
38 interest online to better accommodate the needs of individual users. Other  
39 items on the above lists that are not currently available might be  
40 unearthed through an expansion of the National Crime Victimization  
41 Survey.

42 Jim Lynch and his associates have learned, for example, that  
43 positive prior contacts with the police are more influential than is the  
44 seriousness of the offense in inducing victims to report crimes to the  
45 police.

46 More could be learned about distinctions between repeat  
47 victimizations by the same and by different offenders, and relationships

1 between these various types of repeat victimizations, whether the victim  
2 reports to the police, and attitudes about the police.

3 We could learn more, as well, about special interest offenses,  
4 fear of crime, fear of terrorism, and perceptions of police performance  
5 through the NCVS, if funding were made available. Information about  
6 reporting rates and satisfaction with the police would be especially  
7 valuable at the jurisdiction level if still more funding were available.

8 Regional variation in victimization and related factors are  
9 already reported periodically in Great Britain and Holland. Analyses of  
10 variation in reporting rates and levels of citizen cooperation with the  
11 police and prosecutors across jurisdictions in the U.S. are likely to  
12 produce important insights into police practices.

13 Such lists tend to numb the senses. We can organize our  
14 thinking about them by staying focused on the basics. The fundamental  
15 mission of the police is to protect and serve.

16 The law enforcement community can be supported both to  
17 protect and serve if we give them indicators that reveal how the police—  
18 both locally and nationwide—think about information that will help serve  
19 and protect effectively, fairly and efficiently, but that's not all. The police  
20 must earn and sustain the public's trust.

21 They do so not only by securing domestic tranquility, as is  
22 written in the Constitution, in terms of effectiveness and efficiency, but  
23 also by exercising discretion prudently, by serving the unique needs of  
24 the community (and community policing has been a major development  
25 in the last 20 years on this front) and contributing to the perceived  
26 legitimacy of law enforcement—again, earning the public's trust.

27 One of the great challenges we face is to protect the integrity of  
28 the process of determining what to report about law enforcement, and  
29 how to report it in the face of political influence.

30 We've noted the need to move the UCR from the FBI to BJS in  
31 the interests of both timeliness and substance, and the example of the  
32 richness of the supplementary homicide report is a paradigm that would  
33 be useful for other crimes as well.

34 This may be a Herculean task, but one of the more compelling  
35 arguments is to help the FBI to perform its primary mission without  
36 diversions or distractions, and its primary mission is not the collection of  
37 state and local policing data.

38 Another common problem is that of balancing local-level  
39 accountability with the willingness of locals to participate. Other  
40 countries have been more effective in using victimization surveys to hold  
41 their local police accountable for protecting the public against crime, as I  
42 noted in the longer paper.

43 James Q. Wilson has argued that the provision of statistics and  
44 research on crime and justice is an important exception to his criticism of  
45 many federal programs. He argues that the production of information  
46 needed to improve the public safety is an "essential federal function."  
47 (This from one of the nation's leading conservatives.)

1 He has observed that local criminal justice authorities do not do  
2 research very well, because they're too attached to the results, and you  
3 only need recall the DARE episode of 20 years ago, and so many other  
4 things to get a sense of what I'm talking about here.

5 They're too attached to the results, and they do not do enough of  
6 it because individual jurisdictions that derive the benefits of such  
7 collective efforts would underfund them if the participation were  
8 voluntary.

9 He concludes that, in matters pertaining to the criminal justice  
10 system, there is simply something wrong with not trying to find out what  
11 works. The chief federal role in domestic law enforcement should be to  
12 encourage and fund such research. No one else will do it. Now, maybe  
13 we haven't tried the Bill and Melinda Gates Foundation, and that might  
14 be something worth thinking about. Maybe they'll do it.

15 Wilson's words should provide some assurance as we move  
16 ahead to determine what information is most needed, and why it is  
17 needed. Perhaps we can arrive at a consensus on a few essential items to  
18 provide an opening for changes that will improve policing. With crime  
19 off the political radar screen for now, we may have a window of  
20 opportunity to make substantive improvements in the production of  
21 information about crime and justice, to return to the knowledge-building  
22 trajectory of the 1970s and 1980s, to take advantage of new information  
23 and new communication technologies. It would be a shame if we failed to  
24 seize this opportunity. Perhaps we can make law enforcement even more  
25 effective and, in the process, more transparent, too. And we should be  
26 able to do so without having to negotiate with the building engineer.

27 So, thank you.

28 **Mr. Forst:** My friend Carl Peed is next.

29 **Mr. Reaves:** Okay. Thank you, Brian, for an excellent presentation, and  
30 now our first discussant, Carl Peed.

### 31 **Discussants**

32 **Mr. Peed:** Good morning. I've known Brian for a long time, and I read  
33 his article a number of times, and I tell you, it is over my head, but he  
34 was asked to be provocative, and I think he has been.

35 I'd like to start off by thanking Jeff Sedgwick for holding this  
36 event. There's a mixed group of people in the room. I've talked to some  
37 of my counterparts, in particular in the law enforcement field, and they're  
38 saying, "there are so many people in here I've never seen before." So, I  
39 think it's an interesting group.

40 And also, I'd like to thank Mr. Sedgwick and all of the BJS staff  
41 for having been very helpful to the COPS Office over the years when  
42 we've wanted certain statistical analysis of things like campuses and  
43 academies in the country. They've been very helpful, and been very  
44 responsive in helping us meet those needs.

45 I'd like to address Brian's issue of the sieve and the leakages  
46 from my experience, both as a sheriff in Fairfax County, where we ran a  
47 large facility, as well as Director of Juvenile Justice with the State of

1 Virginia. I think he's right on track about this sieve.

2 My experience is that, if you take a hundred felonies, you're  
3 going to find almost two thirds of them that are getting nol. pros.'d or  
4 dismissed for various reasons. If you take a hundred felonies, you're  
5 going to find that probably a very small percentage (3, 4, or 5 percent)  
6 actually end up serving time or going into custody. So, I think that part is  
7 right on track.

8 As Director of Juvenile Justice, I had a large organization, 2,700  
9 employees. We had 100,000 intakes into the juvenile justice system each  
10 year, and I saw the same thing in the Virginia Department of Juvenile  
11 Justice—people falling through the cracks. The sieves, the leakages, and  
12 so forth.

13 I was appointed by Governor Allen to look at the prison  
14 population in the state of Virginia back in the early '90s. Governor Allen  
15 was looking at the truth in sentencing, no parole, three strikes and you're  
16 out-type strategies. They had a prison population projection and at that  
17 time I thought their projections were way too high. I felt that they were  
18 predicting too many prison beds because I think if you overlay prison  
19 projections, and the economy and unemployment, you're going to end up  
20 with same trend lines.

21 As it turns out, I was right. I was also on the Juvenile Justice  
22 Reform Commission at that time, and I felt like the juvenile justice  
23 system, on the other hand, probably had too few beds.

24 If you look at some case studies in both the Washington area  
25 and the state of Virginia, it drives me nuts to find an offender that's  
26 committed very harsh, harsh crimes—like the case in Virginia where two  
27 families were totally wiped out by two defendants—you look at those  
28 two defendants and their history. They've been arrested many, many  
29 times and in addition to that, if you look at their history in custody, they  
30 were bad people in custody. Sometimes I think the prosecutors don't look  
31 at in-custody-type offenses.

32 So that's an area I think BJS could take a look at: How many  
33 crimes are being committed while people are in custody? Prosecutors are  
34 generally quick to say, "I'll handle that case administratively," and  
35 "don't bring that to the court system's attention." Or they're quick to plea  
36 bargain what would ordinarily be an aggravated assault or a felony case  
37 down to a misdemeanor, and give them time served, or run the time  
38 concurrent. So you end up with some bad people that are bad on the  
39 street, they're bad in custody, and then we turn them loose, and they  
40 commit offenses in Washington, D.C., or the state of Virginia, or  
41 somewhere else in the country.

42 So, I think we need to take a very good look at who's in  
43 custody, and what kind of offenses are being committed while they're in  
44 custody. And as we know that 10 percent of the people commit 90  
45 percent of the crime—in L.A. they call them the "10 percenters." I think  
46 we need to do a lot more research on exactly who's committing the  
47 offenses.

48 In addition, we need to look at victims and perpetrators and  
49 places where crime is being committed. As they say in some circles, it's  
50 the same place. In other words, repeat places. Crimes are committed in

1 the same place more than any other place. We know that. We refer to  
2 those as hot spots.

3 Also, we need to look at who the victims are today, because the  
4 victim today is the perpetrator tomorrow. So, it's victims killing other  
5 perpetrators, or perpetrators killing victims, whether retaliatory or not.  
6 We find, in some cases, the victim and perpetrator are from one and the  
7 same type group.

8 We can't ignore black on black crime, and youth on youth  
9 crime. It's young people killing young people and black people killing  
10 black people. John Timoney, the chief out of Miami, would say, "if these  
11 were white people killing white people, you'd hear more out of  
12 Washington, and more out of the country as a whole." But, in many  
13 cases, these are young people and disproportionate numbers of minorities  
14 killing minorities. So, I think we need to take a look at that.

15 Another issue is the issue of mobility, how mobility has come  
16 into our trends and patterns of crime throughout the country. An example  
17 is Las Vegas. People come from Los Angeles, commit crimes in Las  
18 Vegas, and then go back to Los Angeles the same day. Or, in some cases,  
19 they commit very serious offenses and go back across the border into  
20 Mexico.

21 So I think mobility is much different today than it was 30 years  
22 ago. People are going from jurisdiction to jurisdiction, region to region,  
23 and committing offenses right here. The Washington, D.C., area is a great  
24 example. A third of the offenders in Washington, D.C., are wanted in  
25 other jurisdictions. And you've got a quarter of the offenders having  
26 detainers and/or cases where they're wanted in one jurisdiction under one  
27 name and wanted in another jurisdiction under another name.

28 So, those are some very critical issues. And finally there is the  
29 question of who are our policymakers, and who benefits from those  
30 policies? The chiefs across the country want actionable research, and  
31 that means the research, like we get from IACP and PERF, which is  
32 short-term research.

33 The average tenure of a chief is 3 years or so. So chiefs need  
34 quick, actionable-type research, research like we conducted with the  
35 Police Executive Research Forum on the homicide investigations, or  
36 tasers, for instance. They need that information today. They can't wait for  
37 3 or 4 years to get that kind of actionable-type research. They're going to  
38 be gone by then. So, chiefs want actionable research done in a very quick  
39 manner.

40 Those are my comments, and I look forward to any questions  
41 you might have.

42 Thank you.

43 **Mr. Reaves:** Thank you, Carl, and now our second discussant, Tom  
44 Frazier.

45 **Mr. Frazier:** Good morning. Thanks for the opportunity to be here.

46 I think, and Carl just spoke of it, about the pace that issues come  
47 at a police chief. I went from San Jose to Baltimore to be the police

1 commissioner. I was there 6 years, and there are some differences  
2 between the way it looks to me, and the way it looks in statistical review.

3 I've got all sorts of things coming at me every day, every night  
4 in community meetings, and it requires fairly immediate action, whether  
5 it is strategic decision making, or tactical decision making.

6 I know I'm going to be there 2 years and 10 months. Actually, I  
7 beat the average. I was there 6 years but, by and large, you're going to  
8 see big city chiefs turning over at an incredibly rapid pace—some of it  
9 self-inflicted, some of it politics, a lot of different reasons. Some chiefs  
10 go to bigger and better things, but the fact of the matter is, it's a fairly  
11 short-term opportunity. As a chief I was on the front end of a system that  
12 has long-term implications, particularly on the research side.

13 So, when I have to answer in a community meeting about  
14 slinging drugs in the alley behind the 2600 block of Pennsylvania  
15 Avenue, that gets at drugs, and that gets at gun violence, and that gets at  
16 gangs and a lot of other things that we don't have 10 years to figure out. I  
17 have to make decisions.

18 I had 3,100 police officers. The way I looked at it, I had nine  
19 precincts, and I said, I'm going to empower, I'm going to take my very  
20 best people and make them district commanders, because that's who I'm  
21 going to call into COMPSTAT and grill about how well they're doing in  
22 their little corner of the world.

23 But I have to give them the resources they need to do what I ask  
24 them to do. So I said, imagine yourself as the chief of a 200- to 240-  
25 officer department, depending on which precinct, (which is larger than  
26 probably 90 percent of the police departments in the country). There are  
27 18,000 departments, 85 percent of which have less than 25 officers.

28 So, you've got these 240 officers, and I expect you to problem  
29 solve in your precinct, and come back here to COMPSTAT and have  
30 answers for me about what you're doing and why you're doing it.

31 Now, the guy who followed me came from NYPD, which has a  
32 more centralized model. He took 40 officers out of each precinct, created  
33 a 350-officer "organized crime unit" and ran a more centralized kind of  
34 an operation.

35 Now the district commanders would say, "You took all our  
36 resources away." That model says, "yes, but we have crime analysts, and  
37 we can effectively deploy them." Then it starts to get complicated  
38 because of scheduling and union issues, and these guys are locking  
39 people up and going to court and working 18 hours a day, and don't get a  
40 day off, and all of that kind of stuff.

41 So you've got all kinds of things in motion all the time. My  
42 point is that we need data that we can use in the short term. So, if we're  
43 going to look at things that we can use in the short term, what would that  
44 be?

45 Now we're starting to hear, "well, what about intelligence-led  
46 policing," or "information led policing" (whichever term you prefer) and  
47 "how does that fit into community policing?" I mean, we are the  
48 community-oriented policing generation.

1 I ran the COPS Office before Carl. I believe in it. It's part of  
2 everything that I think is good. It's how you work with your greater  
3 community to identify and work together to define problems, and come  
4 up with solutions that work for everyone, and gain trust, and the kinds of  
5 things you need for citizens to report, and to serve on juries, and to do all  
6 the other things that make a democracy healthy. And then all of a sudden  
7 comes 9/11, and intelligence infusion. Now you can't afford to put too  
8 many officers in an intelligence center, because you've got all these other  
9 problems that you already had, so fusion turns into all crimes, and how  
10 does all this fit into community policing?

11 So, there's a lot of people speculating that that's a strategic  
12 decision. Centralized or decentralized is strategic. Community policing  
13 versus information-led policing is strategic. And then the iterations of it  
14 as you put it into practice are more tactical. But you need information.

15 So, it seems to me the questions are, "where do you need it" and  
16 "what do you need information about?" I would like to see information  
17 about who's doing the damage. I know when David Simon wrote  
18 *Homicide* and *The Wire* and all that, he was a Baltimore Sun reporter. He  
19 stood on the worst corner in town, and he came to me and said, "You  
20 know, I can tell you just from talking to the people on the street, there's  
21 like 300 people on these two blocks that could go to jail for something.  
22 There are only a handful of people really afraid of you. There's a handful  
23 that are violent, nasty mean people that everybody on that street's afraid  
24 of. Why don't you target them?"

25 Well, that's kind of information-led policing. That's not  
26 informant led—this is drug enforcement. Informant led drug  
27 enforcement. There are a lot of reasons for an informant to be an  
28 informant. (Getting rid of your competition is one. Personal vendetta is  
29 another.) You're certainly not going to snitch off the baddest dude on the  
30 block, because if you get caught, you know what's going to happen to  
31 you.

32 So the violent ones are sometimes the ones that don't get law  
33 enforcement attention in the informant driven model, versus the  
34 intelligence or information led models.

35 So we've particularly worked with ATF on that one, and in the  
36 housing projects with the housing police, and we very specifically  
37 targeted violence. Let's take the violent offenders out, because what I had  
38 to tackle, my problem, was the homicide rate.

39 There were 354 murders in Baltimore the year before I got there.  
40 I think there were 38 in San Jose. There are enormous differences, and  
41 so, if we're going to deal with the violence, that's what we need  
42 information on.

43 I think there are areas that we need to look at in the future. I  
44 mean, what do we see that we didn't use to see? Well, we see gangs in  
45 places that we didn't previously see them. I know MS13 because I'm  
46 from California, and MS13 has been there awhile. But it is a big deal in  
47 the National Capital Region. The kind of gang influence and terror that  
48 goes with MS13, and Bloods, and Crips, and the national organization  
49 and training that goes into these outfits is a new thing. In Midwestern  
50 states, gangs are a problem. We're talking with some Ohio chiefs, and the  
51 issues that arise in agencies of all sizes across this country—gangs is one

1 of them.

2 I don't think gangs are incidental, or not of a level of interest  
3 that we need to know about.

4 I think elderly victimization is on the rise when you look at the  
5 demographics. I don't know what offends me so much about crime  
6 against the elderly, but it does, and I think there's going to be more of  
7 that. That's something I'd like to know about.

8 Cybercrime. There is so much fraud, theft, identity theft, and  
9 other kinds of cyber crime. A lot of it's international. It's very difficult to  
10 resolve. In Canada, the private sector is funding a thing called Cyberpol  
11 out of the University of Calgary. It will be an equivalent to Interpol, but  
12 only for cyber crime. It will address financial, child pornography, identity  
13 theft. Cyber crime entails a lot of different things, but I think that's an  
14 area that we just have to have information on.

15 I think private sector partnerships are a way to proceed. We do a  
16 lot more with the private sector than we did before, and that's a function  
17 of 9/11. So much of the infrastructure is privately held. They have good  
18 security, good information. I see the relationship of law enforcement to  
19 the private sector at a magnitude that we haven't seen it before.

20 Now I'm sort of going to get into random thoughts. (Those  
21 weren't random, based on the paper.) Fear is important. People who are  
22 afraid won't cooperate. Snitching. (Home is in Baltimore, and all the stop  
23 snitching stuff.)

24 The fact that citizens feel disempowered is important. Bullying  
25 is important—when your kids are afraid at school. Campus violence is  
26 important, and where all this goes is, if I were to make a suggestion for  
27 data collection, my suggestion would be data collection at the federal  
28 level takes a long time to [allow us to] recognize the problem. Then it  
29 takes a long time to get funding. Then it takes a long time to write the  
30 research methodology and collect it, and analyze it and all that. And I'm  
31 three chiefs ago by then. So that doesn't really help me.

32 What would be helpful to me is to have an array of templates  
33 that I could go into a school and take my own survey on bullying, or  
34 intimidation, or—I wrote a couple of others down here—things such as  
35 “how happy are you with the police service?”

36 We used to do a really informal one, and it kind of went like  
37 this. “You had an impression of the Baltimore Police Department before  
38 you spoke with Officer Wexler. Is your impression after that contact  
39 better or worse than it was before?” Very simple. “Do you think more of  
40 us or less of us, based on that contact?” And then, if you start getting  
41 negatives, then you start to track back why. But those are things that we  
42 need to know right now. Those aren't things that we need to know 10  
43 years from now.

44 The fusion center issue is getting an awful lot of attention. They  
45 have to be all crimes. Police chiefs can't afford to just work intelligence  
46 or information that's counter-terrorism related. It has to be all the things  
47 that help support it, the fundraising, and all the different ways that all  
48 those things occur. But in that, the methodologies that are used become  
49 really important, and it's important to us to know more about those.

1 This all sort of gets into data inter-operability. I don't know if  
2 that's within your purview or not, but take San Jose, for instance. We had  
3 a records management system, a computer-aided dispatch system, a  
4 parolee system, a gang system, a field interview system, a car crash  
5 system, you name it. We had about a dozen systems, as did the other 14  
6 agencies in the county.

7 So, if I wanted to search those databases for any relationship  
8 between anybody named Tom and anybody named Chuck, I needed a  
9 detective friend in 14 departments who would take the time to hit all their  
10 systems. How we can connect and search the data that we have is a  
11 problem that we all struggle with.

12 Some of the systems that the federal entities run, particularly the  
13 FBI, work really well. Motor vehicles works well, warrants works well,  
14 and missing persons works well. Others, (and I think it's probably as  
15 much responsibility of the locals as anything else) don't work as well.  
16 Stolen property and gang files come to mind right away—and that's  
17 because the data isn't entered. So, if it's not entered, it makes me wonder  
18 if it's that valuable.

19 So, I think after it's all said and done, survey templates (which  
20 sort of gets at rapid turnaround) would be important to me. I really did  
21 look at the LEMAS information. That was, in my view, an accurate  
22 comparator. We looked at it for a lot of different reasons, particularly in  
23 terms of hiring and ratios and minority hiring. We found that to be really  
24 helpful.

25 I think my last comment would be; I appreciate the fact that I'm  
26 here and in our meetings there's a lot of chatter about index and NIBRs  
27 and how and who is going to pay for that if we do in fact implement it  
28 (which makes it problematic to implement because nobody in my world  
29 has that kind of money.

30 But we have representatives on CEGIS Advisory Board and  
31 these two guys are always available to you. You can get at them through  
32 me or just call them yourself. Deputy Superintendent Bill Casey in  
33 Boston, Deputy Chief Chris Warren in San Jose, or our reps to the data  
34 side of CEGIS have forgotten more about this stuff than I'll ever know.  
35 They're available to you as well.

36 The roundtable meetings we hold with the chiefs talking about  
37 what's important to them, what's going on in their department, what  
38 works well for them, what's a problem for them, what they need help on.  
39 It's very instructive.

40 I thank you for the opportunity to be here with you this morning.

41 Thanks.

42 **Mr. Reaves:** Thank you, Tom. I think now we move to the next phase  
43 after hearing from our law enforcement experts. We will open the  
44 discussion to the floor. We'd love to hear your reactions, comments, and  
45 suggestions.

#### 46 **Open Discussion**

47 **Ms. Deck:** Hi, My name is Elaine Deck. I represent the IACP,

1 International Association of Chiefs of Police.

2 If we're looking at outcome measures for the local police to do  
3 things differently, why don't we look at and evaluate the way they are  
4 trained?

5 We haven't changed much in the way police are trained, but  
6 we're expecting new things from them. I know that BJS looked at  
7 designing some evaluation of training academies a number of years ago.  
8 I'd be interested in the status of that.

9 **Mr. Forst:** I'll presume to be able to answer the question.

10 I agree with you. Training is one important area. I talked about  
11 the importance of discretion. Regarding the question, "how can we  
12 ensure that our officers exercise discretion prudently?" Well, one element  
13 that's very critical is training.

14 In addition, of course, there's screening, recruitment,  
15 supervision, systems of accountability, and then the question, "what rules  
16 are in place that leave opportunities to exercise discretion?"

17 So, training should clearly help to gear the officer to be able to  
18 exercise discretion prudently. How do we evaluate training? Well, we  
19 can do it. Researchers go about it in two ways. You can do it  
20 quantitatively or you can do it qualitatively.

21 The quantitative approach would be to look at the inputs of  
22 training and look at the outputs of training. Measuring the effectiveness  
23 of training is tricky because there is training for use of force and for all  
24 kinds of things, and each of those requires a different kind of assessment  
25 tool. But how police departments evaluate their own training programs  
26 varies as much as the training programs themselves.

27 **Ms. Deck:** I'm actually talking about basic training.

28 **Mr. Forst:** Academy training?

29 **Ms. Deck:** Rather than in-service training, yes.

30 **Mr. Forst:** Okay. Well, there the question is, "how long is the academy  
31 training?" And it varies from just a couple of months to 6 months or even  
32 more in some jurisdictions.

33 So, there are questions about length of training but also  
34 substance. "What elements are in the training program, and how much  
35 OJT then follows the academy training?" The joke is always that as soon  
36 as the officer graduates from the academy, he or she is given a lecture  
37 from the field officer: "Forget everything you just learned because now  
38 you're going to learn the real world of policing."

39 So, with those kinds of mixed messages, how do officers  
40 operate? There are quantitative ways to assess training, but there are also  
41 qualitative ways. There's wonderful research by John van Madden who  
42 went through academy and studied and learned from the inside what  
43 happened at the academy and how that was processed by his fellow  
44 trainees.

1 So, assessing training is indeed a critical issue and it relates, I  
2 think, in an important way to the question of discretion and how it's  
3 exercised and also the question of effectiveness. It has to be parsed out  
4 by the component of training. What is it that we're training for? How do  
5 you measure performance?

6 It's really tricky. It's a challenging area. It's a critically  
7 important area. We certainly could do a lot more and I would encourage  
8 BJS to consider simple ways of perhaps beginning with the LEMAS data  
9 which does have some information about training to provide some  
10 answers to your questions.

11 **Mr. Reaves:** We do have a new report on the basic law enforcement  
12 training academies coming out this year. We did a census of law  
13 enforcement training academies in 2002 and one in 2006.

14 This doesn't really get at the issue of how we provide quick  
15 turnaround of data, if we can only do something like that every 4 years,  
16 and I heard a lot from our discussants about how they want quicker  
17 turnaround of data. But I think we can look at some issues about how  
18 training is changing.

19 I'm not sure whether we can really get at the issue of  
20 effectiveness. Maybe that's where we need to take it to the next level.

21 **Mr. Wexler:** My name is Chuck Wexler. I'm with the Police Executive  
22 Research Forum.

23 Brian, I really liked your presentation. It was really helpful to  
24 kind of put everything in perspective and the other panelists as well.

25 I have just a couple of comments. It's interesting. As you went  
26 back and you looked at what policing has done in the past 20 years, it  
27 gave me sort of a sense of what we've learned.

28 Probably the biggest change, I think, in policing that goes back  
29 to '93, when a guy named Jack Maple in the New York City Police  
30 Department said we need accurate timely information to make decisions.

31 Now, Jack Maple wasn't a researcher. Jack Maple was a  
32 lieutenant in the Transit Police and somehow Bill Bratton got in touch  
33 with him and the rest is history in terms of COMPSTAT.

34 As you look back and you think, "what were the changes in  
35 policing?" a big part of that was this notion of accurate timely  
36 information to make decisions. And I think that's how the field has really  
37 changed. I think the challenge to BJS is how do you get that information  
38 into the hands of the users in an accurate timely way, so that they can  
39 make decisions?

40 I used to think, "why is accurate timely information so  
41 important?" Why does COMPSTAT work and why does it not (and in  
42 some places, COMPSTAT really doesn't work because in some places,  
43 COMPSTAT is more like providing information sharing, there's no  
44 analysis) but the reason COMPSTAT works is this. I once asked John  
45 Timoney, "What is it about COMPSTAT?" He answered, "If a guy  
46 commits a bunch of robberies in a short period of time and you don't  
47 know about that for 8 months, then by the time you finally know about

1 the information, you can't really intercept that pattern."

2 So that's why COMPSTAT became so interesting, is because  
3 what they had to do in New York City is they had to re-engineer how  
4 they got information. When I worked in the Boston Police Department  
5 and I would look at crime statistics, I'd say, well, isn't this interesting?  
6 Nine months ago, we had this really serious rapist. I wonder if we're  
7 doing anything about that.

8 Well, if you were looking back 9 months, it was very hard to  
9 know if that was still happening. Or, as one of you talked about, the  
10 whole regionalization issue. Carl Peed talked about the regionalization  
11 issue, and how crime moves from one area to another and if we're not  
12 sharing information, and so forth.

13 Anyhow, I think this is a really great conversation—to explore  
14 how you get information into the hands of the users in an accurately  
15 timely way.

16 Now, one of the biggest challenges, I think, is getting mind-  
17 share of police chiefs around this topic. Herman Goldstein once said  
18 something very interesting to me. He said, "You go into a police  
19 department and they have a crime prevention office. It has two or three  
20 officers." For a gigantic organization—I worked in the Boston Police  
21 Department—we had this office on the first floor. There were two guys  
22 that did crime prevention for the City of Boston. And Herman Goldstein  
23 used to say, "This is how the department thinks about crime prevention?"  
24 The two officers do lots of things and do surveys and that's how they  
25 thought about crime prevention."

26 Today, there's not a police chief alive who's doing a good job  
27 who isn't thinking about how to prevent the next crime. I think the same  
28 could be said about crime analysis.

29 In police departments today you have crime analysts. Where are  
30 they? They're in the crime prevention unit. They're usually civilians, and  
31 when there are cutbacks, they're the first to go. So, here's an entire police  
32 department delegating their crime analysis to these analysts down here  
33 who are driving policy? No, they're not. Maybe they're providing input  
34 to the chief, but the chief is making the decisions.

35 So, my challenge to BJS would be how do you get mind share?  
36 How do you get police chiefs to do this analysis? How do you get them  
37 to think about your victimization study?

38 Your victimization study is fascinating. There's a lot of  
39 information in there. But I'd venture to say most police chiefs aren't  
40 looking at victimization studies. They're looking at the UCR. They're  
41 looking at reported crime and the impact on immigration when  
42 unreported crime goes through the roof because people are afraid to  
43 report crime. And then the media reports that crime has actually gone  
44 down in these areas of stricter immigration policy when, in fact,  
45 unreported crime has gone up through the roof, but you're not even going  
46 to be able to calculate unreported crime because no one's going to speak  
47 to you because they'll be afraid to speak to you because they'll think  
48 you're the government.

49 So, all of these issues, I think, are great. My message today to

1 you is to say how do you get the police chiefs to use BJS information and  
2 to understand the value of it? Because I don't think the problem is they  
3 don't have enough information, I think the problem is they have too  
4 much information and they don't know how to analyze it and use it.

5 **Mr. Peed:** I think a good area for BJS to take a look at is the number of  
6 crime analysts in the country. In November 2007 we concluded a  
7 discussion on intelligence for the IACP. Working with IACP, we brought  
8 about 130 people from the intelligence community and state and local  
9 law enforcement. One of the six breakout sessions was about fusion  
10 centers. The other one was building analytical capacity. And there's very  
11 little information on exactly how many intel analysts and/or crime  
12 analysts there are in the country.

13 In addition, the Police Foundation has just published a book  
14 discussing the need to combine these responsibilities. In some cases, as  
15 Chuck is saying, the chiefs aren't listening to the crime analyst data, but  
16 it's the little crimes out there that might end up making the big  
17 difference. For instance, there was the cigarette smuggling case identified  
18 in Southern Virginia that was a funding mechanism for Hezbollah and  
19 the recent case in South Carolina where a state trooper or a deputy sheriff  
20 stopped two kids from Saudi Arabia who had material to construct a  
21 bomb in the back of the car. They went to school down in Florida.

22 So, I think it would be useful to look and see how many crime  
23 analysts there are and how many intel analysts there are. I think you've  
24 got to elevate the importance of crime analysts in the country.

25 In some cases, they're told to "go sit over there and enter data,"  
26 versus, as Chuck is saying, being a valuable part of analyzing the data  
27 and giving good information to the chiefs and the tactical operational  
28 people.

29 Just to comment about Tom's recent meeting up in Vancouver.  
30 Two of the most important police chiefs in the country, Bill Bratton and  
31 Lee Baca, were at that meeting, and they discussed whether they're going  
32 to move forward on intelligence-led policing and information-led  
33 policing. I thought Bill Bratton made a great comment. He said, "Before  
34 we go anywhere, you've got to have a good solid community policing  
35 foundation."

36 **Mr. Frazier:** And interestingly enough, they jointly operate an analysis  
37 center called JRIC in L.A. that's probably one of the better ones in the  
38 country. So, there is a lot of room for discussion.

39 A comment I forgot to make in the realm of the desire for fairly  
40 immediate information. I can tell by who comes to our meetings and the  
41 comments of the chiefs what really resonates in their cities.

42 We have a new sponsor called Public Engines and what they do  
43 is put real-time crime data on the departmental websites which sort of  
44 gets at another thing that was in the earlier comments about how we're at  
45 the mercy of the media.

46 Basically, what's going on in the big departments is an effort to  
47 change our communications strategy, and it's funded by the COPS  
48 Office. We truly appreciate it. So we can create our own public image  
49 and move away from the talking head who talks about the latest thing

1 that happened.

2 Most of the time, they use an ex TV reporter who's good on  
3 camera. But there's a much bigger strategy in terms of creating public  
4 awareness and public image and that's the direction that we're going  
5 because we're at the mercy of the media any other way. There's a lot of  
6 interest in that.

7 Another strategy becoming very, very popular with the  
8 department and in the community is computer programs that allow you to  
9 type in your address and see crime that's happened there. It's called  
10 Crime Reports. In your location you zoom it in, zoom it out, look at  
11 whatever you want. Those are very, very popular and that says to me that  
12 the departments are responding to a community insistence on real-time  
13 information. That, I think, is instructive as well.

14 **Mr. Bruce:** I'm Christopher Bruce. I'm the President of the International  
15 Association of Crime Analysts. So, I thank you for all the comments  
16 you've made about crime analysis. It wasn't why I stood up, but I  
17 appreciate it, and I'd just offer two quick things about that.

18 This year, our association is conducting the first global crime  
19 analysis census hoping to measure for the first time how many crime  
20 analysts and intelligence analysts are working around the world, exactly  
21 what they do, and how much they get paid, issues that are very important  
22 to us.

23 I work for a fairly small agency in Danvers, Massachusetts, and  
24 many of us who work in agencies like mine try to see ourselves as sort of  
25 a clearinghouse for external research and external data.

26 So, one of the questions you asked is, "how do you get that  
27 information into the hands of the chief?" Obviously there is so much out  
28 there that even I, acting as that clearinghouse for my agency, can't  
29 possibly review it all. But just by virtue of being here I'm certainly going  
30 to be much more aware of the publications that this organization puts  
31 together and how they might affect my particular agency.

32 But the reason I stood up was actually to ask a question about  
33 police effectiveness because this is an issue that's really dear to my heart.

34 Every year about this time, I have to prepare an annual report  
35 for my agency—most crime analysts around the country do—in which  
36 we review what crimes have gone up, which have gone down, and which  
37 decreases we should take credit for or increases we should take blame  
38 for. It's a matter of crime analysis ethics. It's a matter of police ethics not  
39 to be spurious in our claims of effectiveness.

40 We have all seen agencies around the country in the last 15  
41 years that have benefited enormously from demographic trends, from  
42 social trends, from economic trends, where crime has gone down  
43 significantly—taking credit for that when they might have been due  
44 credit for part of that, maybe none of it. (We don't really know.)

45 We've also seen agencies that have seen increases in crime  
46 through no fault of their own, again the same types of demographic  
47 trends or layoffs.

1 In a small agency like mine, anything—the opening of a new  
2 Home Depot could cause crime to go up 20 percent and there's not much  
3 that we can do about that sort of thing as a police department.

4 I guess my point is that we are aware in policing that we only  
5 control a certain percentage of what goes on. We can only be effective to  
6 a certain degree and the rest is dependent on these social trends, these  
7 economic trends over which we have very little control. These trends can  
8 either accelerate a decrease in crime (for which we should not take full  
9 credit) or they can obliterate any decrease that we've managed to achieve  
10 (for which we cannot take full blame.)

11 Is there any movement, any work towards a model that might  
12 help agencies to determine what crime they actually have control over?

13 I can't imagine. It would be an enormously complex model that  
14 would have to take into consideration demographics, economics,  
15 employment rates, and residential and commercial development rates, but  
16 this is something that thousands of agencies have to struggle with on a  
17 yearly basis and end up most of the time making fairly spurious  
18 judgments even when we don't want to, about them. So that's the  
19 question I put to you.

20 **Mr. Forst:** It's a great question. Researchers have ways of trying to  
21 estimate how much of the variation in crime is attributable to the police.  
22 There are various ways of doing that and they usually come up with  
23 unsatisfying answers because of measurement problems, because of  
24 unexplained variation, because of a whole lot of things. It reminds me of  
25 the conversation we have about the importance of the president in  
26 controlling the economy and we have people like James Carville saying,  
27 "It's the economy, stupid. That's what you should be talking about."

28 And there is no question but that presidents can harm the  
29 economy. And if police really knew how little control over crime they  
30 had, as you suggest—because it's attributable to the Home Depot that's  
31 built or the one-man crime wave phenomena that's largely out of police  
32 control—I'm not sure that would be a good thing. Because it might make  
33 them throw up their hands and say, "well, there's not much we can do  
34 about it." So, it's probably healthy to believe that they have more to do  
35 with crime than they really do.

36 There has been some looking at what police chiefs say about it  
37 when crime goes up. You could do content analysis about that. To what  
38 extent do they say, "it was out of our control"? To what extent when it  
39 goes down do they take credit for it?

40 So, I'm not sure that that's very useful. What's more useful is to  
41 refine our measures, to focus less on how many police there are and more  
42 on what they're doing. And we've already seen that what police do  
43 matters more than how many there are. So, there's a whole lot of room to  
44 refine our estimates of how police make a difference in various kinds of  
45 crime.

46 They can have a bigger impact on outdoor crimes than on indoor  
47 crimes. That's been found again and again. So, all we can do is just keep  
48 picking away at this—analysts, researchers, and others—but good data  
49 are critical, and so is more and more analysis.

1 **Mr. Mahoney:** I'm Barry Mahoney with the Justice Management  
2 Institute, Denver, Colorado.

3 First, thanks to BJS for organizing this extremely useful  
4 conference, especially so that people can gather who are interested in,  
5 and use, this data from a variety of perspectives and different aspects in  
6 criminal justice.

7 Particular thanks to Brian for what I thought was a really good  
8 and thoughtful paper. I want to pick up on one particular piece of it. He  
9 mentioned the desirability of getting more data on regional variations and  
10 you also identified what, it seems to me, is a big gap.

11 BJS tends to focus on statistical data on the nation as an entity.  
12 NIJ tends to focus on particular research topics generally built around  
13 research in one or a few jurisdictions. There's a real gap around  
14 comparative research.

15 So, it seems two people have mentioned COMPSTAT.  
16 COMPSTAT's especially valuable, it seems to me, for two reasons. One,  
17 it's timely. It gives you something that's actionable right away. Second,  
18 it's comparative. It tells you where the problems are, where you don't  
19 have to spend a lot of resources right now.

20 To what extent is it feasible for BJS to move towards both more  
21 timely information (taking advantage of the advances in communications  
22 and information technology) and more comparative information?

23 For example, I'm familiar with the SCPS research, State Court  
24 Processing Statistics. It's interesting to know that, say, if there's a failure  
25 to appear rate of 20 percent across the nation, it's far more useful to  
26 know that it's four percent in one jurisdiction and 65 percent in another  
27 jurisdiction and then to find out what makes the difference.

28 To what extent can BJS retool itself to move in that direction so  
29 that you get more timely and more useful information to let you compare  
30 and find out who's doing well, who's not doing so well, and why, so you  
31 can make that useful in your own jurisdiction?

32 **Mr. Forst:** That's an excellent suggestion, Barry. It brings to mind the  
33 term Jeff used earlier, the 180 degree turn in the way we collect data.

34 I think when we started LEMAS more than 20 years ago, we  
35 just asked for basically raw data to be sent in by the departments and we  
36 would analyze it, compile it, and give them a report at which they could  
37 look to see where they stood. But now there's so much analysis being  
38 done by the departments themselves. It's analysis that really wouldn't  
39 make sense at the national level, but it makes a lot of sense at the local  
40 level. If we could get our hands on that data and somehow bring it all  
41 together that might be useful. If we were asking, "what makes crime go  
42 up and what makes it go down?" and we could say, this makes it go up in  
43 50 out of 60 cities that we've studied, that might be useful.

44 So, how do we get to that level? How do we get our hands on  
45 the COMPSTAT data (whatever you want to call it) or the crime analysis  
46 work that's going on out there? I think that's the real challenge.

47 **Mr. Mastrofski:** I'm Stephen Mastrofski. I'm with George Mason

1 University.

2 I was very taken with the analogy that Brian used about the  
3 knapsack problem. I think that is one very important problem, but it made  
4 me think of another problem that I'd like you to think about, and maybe  
5 some ways of dealing with it.

6 After you've decided what you want to put in the knapsack, you  
7 have to figure out where to get it. And I think that, too, is a challenge  
8 that's worthy of consideration. So, let me use another analogy on the  
9 knapsack problem: the problem of getting oil, which is something that we  
10 all need a lot of. Of course, you go where the oil is and the oil is getting  
11 scarcer—you have to go deeper and deeper to get it.

12 I think this analogy holds in dealing with understanding all the  
13 things you want to put in the knapsack about policing. You have to drill  
14 deeper and deeper.

15 Let me be less abstract and tell you what I mean. I think that if  
16 you really want to take a look at variation in crime, that is high crime  
17 versus low crime, or variation in policing, good policing or bad policing  
18 or not so good policing, you're probably going to find more variation  
19 within any given jurisdiction, particularly large jurisdictions, than  
20 between jurisdictions.

21 We all know that there are tough parts of town and not so tough  
22 parts of town. I spent some time years ago studying in Richmond,  
23 Virginia, and was struck by the great difference not just in wealth but in  
24 order and the style of policing that went on in the west part of town  
25 versus the south and the east part of town, that can make crime control  
26 less effective. And yet, a lot of the way that we gather information is also  
27 piecemeal. Let me pick on LEMAS for just a minute.

28 Even though they're not measuring crime, they are measuring  
29 things like police inputs and police activities. It's at the jurisdiction level.  
30 So, particularly with large departments, we are comparing departments  
31 that overall look a fair amount like each other. But when you go inside  
32 the department, you find there's a huge variation between what you get  
33 on the right side of the tracks and the wrong side of the tracks or even the  
34 same side of the tracks that varies, and yet we're not getting information  
35 at that level.

36 We're not going where the oil is. One of the suggestions that I  
37 would make to BJS is that you need to go where the oil is and I think we  
38 are beginning to hear some recommendations to that effect here.

39 When you're talking about COMPSTAT, what are you talking  
40 about? You're not talking about the department, generally. You're  
41 talking about beats or precincts and not only that, you're talking about  
42 hot spots and is this hot spot getting the appropriate treatment or not?

43 So, if you really want to understand what works and what  
44 doesn't, what research is telling us these days is that it's how you manage  
45 the resources you have in a pretty small area, not the department,  
46 generally. So one of the things that BJS might do to get a better handle  
47 on that question for the police, for policymakers, is to try to find ways to  
48 drill down, maybe not in every department, that's way too many—you  
49 have over 3,000 in LEMAS. That's way too many to do, but some sub-

1 sample, so that you can find out what's going on at that critical level.  
2 And that goes for the decisions that officers make, too.

3 It's pretty standard operating procedure in academia and on the  
4 street to say that the lonely police officer exercises the most discretion.  
5 That's something we don't gather much information on, with the  
6 exception of the Police Contact Survey, which gives us the perception  
7 from the citizen's perspective, not the officer's perspective, and so I  
8 guess my recommendation is it's fine to have that general stuff at the  
9 departmental level, the jurisdiction level, but when you can drill down  
10 and understand what's happening at the micro level, you're going to be  
11 able to improve policing a whole lot more.

12 **Mr. Frazier:** Steve, that reminds me of a series of events in Baltimore. I  
13 went into a housing commissioner's office and they had a big map up on  
14 the wall and I said, "Danny, where'd you get my crime map?" He said,  
15 "That's not the crime map. That's the Section 8 housing map."

16 I went into the health commissioner's office. I said, "Peter,  
17 where'd you get my crime map?" He said, "That's not the crime map.  
18 That's the AIDS map."

19 Now, I don't know where all this goes, but to define a smaller  
20 area—it goes to a larger governmental strategy and what I tried to do is  
21 to work it within the local government, to have a coordinated  
22 geographically-based strategy so that I wasn't one place and housing was  
23 doing a big project in another place and health was doing another project  
24 in another place, so we'd all be in the same place at the same time, so that  
25 we could take territory back.

26 One of the principles of community-oriented policing is  
27 regaining public spaces, parks and things like that come to mind right  
28 away, but we literally color coded blocks green, yellow, red, and when  
29 you look at your city that way, you want to connect green to green and,  
30 you know, stop blight.

31 There are larger strategies—and that may be bigger than what  
32 we're able to do—but I very much agree with your concept that it has to  
33 be more narrowly defined or the more narrowly defined it is, the more  
34 useful it is.

35 **Mr. Lynch:** My name is Jim Lynch. I'm from John Jay College, and I  
36 really come at this differently than most of the speakers so far because I  
37 come at it more from the statistical point of view.

38 Some of the things that Tom and Carl said, as well as what  
39 Brian has said, made me think about two things.

40 Many of the things that people talked about here have really to  
41 do with—and I think Chuck Wexler said it—really to do with data that  
42 you all have on your own (that is to say, local problems, local issues)  
43 when really one of the BJS roles—is to think, as Barry Mahoney says,  
44 comparatively in some ways. They collect data not to tell police  
45 departments about their own jurisdiction—which would be kind of  
46 foolish—but to tell police departments about other jurisdictions and  
47 provide useful comparative information.

48 So, I'd like to know from people who have been there, what

1 kind of comparative information, (be it at the jurisdiction level or what  
2 Steve said in terms of drilling down below that) what kind of  
3 comparative information would be most valuable to you?

4 I say this with an eye towards the controversy in the Quizno  
5 business in Detroit and all the rest of that stuff where comparison did not  
6 seem to go well for certain jurisdictions.

7 So, what comparative information is most important to you?

8 The second thing. Carl I think—or maybe it was Tom—  
9 mentioned templates. One useful way for technological transfer from the  
10 Feds to the locals would be templates, and I think that's an interesting  
11 idea, but BJS has had a template for the National Crime Survey for years,  
12 and I don't know, maybe, Brian, you can tell me how much that's been  
13 used.

14 I'm a little skeptical of templates in terms of actually getting  
15 into using them and if you all had any thoughts about how you might  
16 facilitate that, I'd like to hear it.

17 **Mr. Frazier:** I think an interesting national comparison would be gang  
18 population in the prison system. I think that would track the gang issue  
19 state to state.

20 Templates. I was always reluctant to have somebody inside  
21 write a survey because just the way things are worded skews them, and  
22 you always wonder if your data's right and you don't want to be  
23 criticized for all that and maybe you're just better off leaving it alone.

24 But a well-crafted survey in key areas, I think if they're not  
25 getting used, it's a marketing problem. Everybody knows what areas  
26 we're concerned about and if you have a good survey on something, I'd  
27 invite you to our meeting and you can pitch it and I guarantee you they'll  
28 use it.

29 **Mr. Peed:** We have had community survey software available to police  
30 departments that they could download and use for free—a template-type  
31 product. I'm not sure where that stands currently. I know there have been  
32 some funding issues with it, but I think it would be an area we should  
33 look at maybe expanding on. I think it was somewhat popular. I don't  
34 have any numbers on how many departments were using it, but I know  
35 there were quite a few requests for it.

36 **Mr. McDevitt:** This is Jack McDevitt from Northeastern University in  
37 Boston.

38 Two questions. Brian, I'm intrigued with the sieve analogy. I  
39 think it's correct. It's intriguing. What drives me to a couple of troubling  
40 places I'd like to talk about is this. Do we want all the next 80 percent or  
41 90 percent of those cases brought into the system? What would that do?  
42 Would it be equitable? Should all those cases be in the system?

43 The question is; there's some really important research to be  
44 done about which cases we are missing and which cases we should be  
45 bringing in and moving. And that again speaks to BJS data. Which ones  
46 would give us the best return and not raise questions of equity and  
47 justice? It would be interesting to think through that a little bit more and

1 hear your comments on that.

2 I guess regarding the issue of “we can’t wait for a research  
3 study”—I think we know that. We know, we’ve heard that forever. You  
4 can’t take 3 years to do an NIJ study and then come back and help the  
5 department.

6 I think we’re past that. I think right now the question is: “how  
7 can the techniques and the people who do the research work with  
8 departments on a day-to-day basis improve the information?”

9 It isn’t a question of going out and doing another 3-year study  
10 and coming back to the department, but are there ways that you collect  
11 your COMPSTAT data that can be better? Are there ways that you  
12 analyze your data—comparisons to your data that could come from  
13 national estimates that we’re talking about—that could improve your  
14 ability to understand your jurisdiction in a real-time basis?

15 That’s where researchers have to move. They have to move out  
16 of the paradigm that a researcher is someone who takes my data, goes  
17 back to his office, comes back 3 years later and tells me that I did it  
18 wrong. And that’s sort of the model that has existed for so long. I share  
19 the feeling that—Jim’s point—that templates are important, but that’s not  
20 the culture of police departments, to pick up a template and say, “oh, go  
21 do this.” The culture is, “let’s talk it through and make it work for our  
22 jurisdiction” because every police department thinks their jurisdiction is  
23 unique in the world, and they have their problems, and nobody else  
24 shares them.

25 So, I think that the templates could work with a process where  
26 you can get people talking about something that fits within that  
27 jurisdiction.

28 We’ve got to think of a new paradigm, not the old research  
29 paradigm. We need a new paradigm where we think of this as more of  
30 partners working together rather than supposing that we all have our  
31 separate worlds.

32 **Mr. Frazier:** I think that is a great idea. We meet 3 times a year and real-  
33 time data are presented. We just met in Vancouver last week and those  
34 data were current as of February 1<sup>st</sup>. Everybody brings their own [data]  
35 and so you can sort of determine how you’re doing in 4-month  
36 increments which is moderately instructive.

37 If somebody’s numbers are more than a standard deviation or  
38 two out, they talk about it and I think it is instructive. I think most chiefs  
39 would welcome an academic look at that. Some are more research  
40 oriented than others.

41 Our president, Gill Kurlakowsky, is very receptive to that kind  
42 of thinking. Darrel Stephens in Charlotte, the outgoing president,  
43 likewise, and I think that’s a great idea.

44 The template stuff is more situational. Some kids get beat up on  
45 a school bus, and [you wonder] is bullying an issue? That’s sort of a  
46 reactive kind of a thing where you may want to go in and run it in a  
47 particular school or particular grade level and maybe compare school to  
48 school.

1 I think it would be a great tool to have that doesn't exist now  
2 (that's more a reactive than a long-term look) but I agree with what  
3 you're saying.

4 The other comment that came to my mind, as we heard  
5 COMPSTAT a couple of times, I have a couple of COMPSTAT stories  
6 that I really like: It was around May and residential burglaries went up  
7 and so I was sitting there beating on the Northern District commander  
8 where I live, saying, "why is this?" And he said, "Well, if you really  
9 want to know the truth, I'll tell it to you. They had riots in the prison last  
10 summer because the prison was overcrowded. They don't want to have  
11 riots in the prison again, so they're cutting all the non-violent offenders  
12 loose. So, auto thefts are up and burglaries are up."

13 Now, that's clearly out of our control, but it didn't mean there  
14 was nothing we could do about it. So I asked, "have you gotten with  
15 adult parole? I mean, who has been paroled to your precinct and has  
16 anybody hooked up with him to go out and see who's using and who's—  
17 there are things you can do."

18 I think that's a good COMPSTAT example. The other one  
19 escapes me now, so I'll spare you.

20 **Mr. Forst:** If I could address the first half of your question, Jack. It's a  
21 great question and one that I tried to address in the paper, but it's hard to  
22 get our hands around because it's so huge.

23 I quite agree. It's impossible. We wouldn't want all felony  
24 victimizations to end in conviction. But my point was simply that we've  
25 got a problem that's more serious than most of us are aware, that when  
26 only 5 percent or so of felony victimizations end in conviction, very few  
27 would step up and say, "well, I think that's about the right number."

28 What we need is information about what's going on. How much  
29 does it vary from affluent neighborhoods to poor neighborhoods? How  
30 does it vary by socioeconomic status? How does it vary by jurisdiction  
31 regionally? How does it vary and how does it vary at each stage from  
32 victimization to report, from report to recording, from recording to arrest  
33 and from arrest to conviction?

34 We don't know enough about the variation jurisdictionally or by  
35 socioeconomic status or other factors regionally and so on at each stage. I  
36 have no clue what the optimal level is, but I'm sure that it's higher than  
37 five percent and it's lower than a hundred percent. And we could do  
38 some sort of social cost calculus to try to figure out what the right  
39 number is, and we're not going to get there overnight, but the solution  
40 begins with understanding the dimensions of the problem by stage and by  
41 major factor. And we can start with jurisdictional differences because  
42 that one is manageable and then find out what it is about this jurisdiction  
43 that the reporting rate or the arrest rate is so much higher or so much  
44 lower than elsewhere.

45 It's like a big detective problem, really, and we want to solve  
46 this problem. But it begins with getting the right information and we have  
47 a long way to go. We need to take steps and we hear about so many fads  
48 that seem important. I don't mean to make light of them, but community  
49 policing has become a buzzword—there's a lot of meat there, but a lot of  
50 it is just talk, and it diverts us from the fundamental issues of securing

1 public safety.

2 This strikes me as keeping our eye on the ball here, that the  
3 problem is a huge amount of leakage from victimization to conviction.  
4 We need to get our hands around where the leaks are. How much does  
5 leakage vary from place to place? Why does it vary? So, my pitch is for  
6 more information, more research.

7 **Mr. Frazier:** I think one of the reasons Carl and I are here is to help you  
8 better understand how departments really work, and you are the  
9 researchers that I hope will trigger research concepts. The other  
10 COMPSTAT example occurred in that same residential burglary  
11 discussion I mentioned earlier. I said, "the clearance rate's low; are you  
12 guys taking prints?" They said, "Yes, we're taking prints, but the backlog  
13 is several months." I said, "Why?" They said, "Because it's so difficult to  
14 find and train fingerprint examiners. And then we're so close to  
15 Washington D.C., where they pay so much more, that we can't retain  
16 them."

17 So, we had a salary inequity issue that meant we were losing all  
18 our fingerprint examiners and couldn't analyze our physical evidence.  
19 That raised [awareness of] a process problem inside our government.

20 Another area where I think it's important and becoming more  
21 widespread and more relevant is DNA examination. So, if DNA-related  
22 research is on your screen, I think that's a good thing. I think that would  
23 be helpful.

24 **Mr. Peed:** I think Brian's paper was right on target, and I think it's a  
25 challenge not only to the police departments across the country, the law  
26 enforcement agencies. I think he throws out a challenge to the entire  
27 criminal justice community because when looking at prosecution, you  
28 have to look at the courts, probation and parole, the magistrates, all the  
29 little players in the system that might have a big impact on public safety  
30 in a police department.

31 So, I think Brian's right on track there, and I think we're facing,  
32 potentially, some upcoming challenges with the policies of the '90s  
33 which included the, "three strikes you're out, no parole, truth in  
34 sentencing"-type strategies that built up the 600,000 people in prison.

35 Well, they are now getting ready to be released and so it may be  
36 an opportunity for BJS to look at that population. Furthermore, there is  
37 the recent decision on crack cocaine offenders, reversing or allowing  
38 crack cocaine dealers or people under the influence of crack cocaine to  
39 be released now. And I don't know how many that's going to be, but it  
40 could be a substantial number of people that got caught up in that  
41 600,000 back in the '90s that could go back into the community.

42 Given our experience in terms of repeat offenders and  
43 recidivists, you could be facing some challenges within the police  
44 community as a result of the other groups making important decisions  
45 that impact police and/or our public safety. The final comment for Brian,  
46 I think, was "more research is needed." And that's true.

47 **Mr. Schaufler:** My name is Richard Schaufler. I'm from the National  
48 Center for State Courts. I think one of the immediate benefits of this  
49 workshop is the cross-pollinating across our justice system silos. I'm

1 sitting here thinking that clearly law enforcement's very preoccupied  
2 appropriately with crime analysis, crime rates, geographic distribution of  
3 crime, and courts are (oddly) not. Ultimately our end users, the public,  
4 the taxpayers, victims of crime—at the end of the day, they're not real  
5 interested in this kind of finger pointing exercise. For example, tragically  
6 in the Virginia Tech case, the court ordered the offender to mental health  
7 treatment.

8           The mental health treatment provider didn't realize they had an  
9 obligation to report to the court when that offender did not show up and  
10 complete treatment. The court didn't have the information systems or the  
11 business processes in place to recognize when they had not received that  
12 information and so back and forth.

13           So, at the end of the day, who's responsible for this problem or  
14 who's responsible on a daily basis for recidivism, for the crime rate?

15           There are courts that will say, "well, we're not taking  
16 responsibility for recidivism because we don't control probation and  
17 parole." And again, I don't think the public cares. They want the system  
18 to work. And, in thinking about complementary relationships and  
19 complementarities that were mentioned earlier, I think one of the things  
20 that we're all going to need to digest and certainly BJS will is: what are  
21 these issues that move across all of these silos?

22           Probably almost all of them in some form, but when you think  
23 about this issue of crime, if you're a judge, you want to know: what  
24 sentence is going to be effective and appropriate? Is the goal to  
25 incapacitate the seriously bad people, the six guys in the two blocks? Do  
26 I have a different strategy for them than I do for the 294 others where I'm  
27 maybe appropriately diverting some, maybe appropriately trying to fix  
28 whatever their underlying drug or other problem is?

29           I think the problem is that we don't share that information and  
30 understanding and in the sense that it all comes down to what the  
31 prosecutor decides to do and how the crime is going to be charged. Is it  
32 going to be plea bargained? Is it going to be charged as a felony? Is it  
33 going to be charged and then pled down? And part of the problem we  
34 have in the funnel is that there aren't resources to charge everything and  
35 adjudicate everything, so everybody's making decisions.

36           The problem is we aren't always sharing the criteria that we're  
37 using in making sure that there are at least some that are [charged].

38           So, I guess a question then to the law enforcement folks would  
39 be: you've talked about the crime data on the front end which is what  
40 you're looking at and managing. I'm wondering if information you had  
41 from the back end—the adjudication end of it—coming back to you,  
42 whether that would help you in what you do.

43           In other words, what is it that courts and/or probation do that  
44 needs to come back to you that would help shape what your practices  
45 are?

46 **Mr. Forst:** What we are talking about here is lapses in information that  
47 produce lapses in justice. It has occurred to me that we have sophisticated  
48 systems for managing errors or lapses in other domains in a production  
49 process. We look at the cost of a faulty product and we look at the cost of

1 improving the machinery so that we reduce faulty product and we  
2 balance the two areas one against the other. It's self-contained and so it's  
3 manageable.

4 As you pointed out, in the criminal justice system we have  
5 different players. So, the problem of Virginia Tech as with the problem  
6 of 9/11, which could have been stopped, too, "if only." And you have  
7 20/20 hindsight, if only we had done this, or if only we had done that, we  
8 could have prevented it.

9 The question is: how can we manage errors so as to minimize  
10 the social costs of the lapses against the social costs of doing too much  
11 security at the expense of liberty and privacy?

12 It's hard to do because the system is atomized from  
13 victimization to corrections. There's that dimension. There's also the  
14 spatial dimension—we have 17,000 police departments that talk little to  
15 one another.

16 We have 3,000 counties with district attorneys that seldom talk  
17 to their own police departments and that talk even less to each other and  
18 so on.

19 So, it's easy to talk about managing errors and lapses in a self-  
20 contained system, but ours is not at all self-contained and this is where  
21 BJS comes in.

22 BJS is the unifying framework within which we have data and  
23 the question is: how can BJS contribute to this problem of managing  
24 lapses, not just single ones like Virginia Tech, but all of them, taking into  
25 account all of them?

26 It's almost too much to think about. It *is* too much to think  
27 about, but we have to begin somewhere and it seems to me that to raise  
28 these questions is to begin to think about how to resolve them. It seems to  
29 me that we're in the right place to start.

30 We can't handle them all for sure. There will always be a  
31 Virginia Tech kind of episode, but we should be able to manage them so  
32 that the public has some assurance that we're doing the best we can with  
33 what we have, and getting the information we need, drilling down is the  
34 word of the day, to make sure that we're getting down to the oil. The  
35 metaphors are interesting, but they're somewhat appropriate here.

36 So, we have to do what we can and start with the most  
37 accessible, manageable, solvable problem, I think, and continue to be  
38 clear about what the big picture and the big problems are and then work  
39 from there.

40 **Mr. Peed:** I believe one issue is that sometimes the courts don't get all  
41 the information at the earliest part of the process. So, you have tunnel or  
42 stovepipe-type systems. They may not get the information early on in the  
43 stages of arrest, arraignment, prosecution, et cetera, et cetera.

44 So, I think better coordination and centralized criminal justice  
45 information systems at the state and local level, are very beneficial.

46 When I was director of Juvenile Justice for the State of Virginia,

1 we created risk assessment instruments, risk assessment at every intake.  
2 The purpose of that risk assessment was to ensure the judge got good  
3 information with which to make early decisions, so he could make  
4 decisions about releasing to parents (or to not release) and those kind of  
5 decisions.

6 Secondly, we implemented risk assessments upon exit. Again,  
7 not all people getting out of the system need the same level of  
8 supervision. Somebody who's involved in a domestic dispute or domestic  
9 crime rather than, say, a robbery, a violent crime, or assault may not need  
10 much supervision. So, we were able to assign probation staff, parole staff  
11 caseloads based on who needed the most supervision.

12 So, I happen to be a believer in risk assessment kinds of  
13 instruments to give the courts information and to give probation and  
14 parole information.

15 **Mr. Reaves:** Would that type of information be useful to the police,  
16 also? Would they have access to that?

17 **Mr. Peed:** I would imagine that kind of information would always be  
18 helpful. And I think the Boston model, where probation and parole  
19 teamed up there because sometimes probationers, probation officers, and  
20 parole officers have more information about a defendant than do police  
21 departments. Also, they have greater latitude in terms of drug screens and  
22 searching and so forth than police officers.

23 **Mr. Frazier:** Just thinking out loud here, I had a perpetual problem with  
24 my prosecutor's office and it ended up that if we had somebody we really  
25 wanted to dial in on, it went EXILE, went into the federal system.  
26 There's a limit to how many you can do. There's a reason they call those  
27 "federal cases." They're very labor intensive. They're not popular with  
28 the federal judges and so you're limited in how many you can really  
29 bring.

30 What that doesn't speak to is all the other 90 [percent] that fell  
31 out in the sieve process and turned into a finger pointing exercise where  
32 the prosecutor said there were procedural errors in evidence collection or  
33 interrogation or things fell out because of flaws in discovery. There are  
34 so many of those cases that just go nowhere.

35 You read in the local papers over and over and over again  
36 what's wrong. This guy's been arrested so many times for violent  
37 offenses that you really almost have to—it's sort of the new thing.

38 For instance, one of the things that came out of L.A.'s consent  
39 decree is a very effective audit unit. They can go in and track a case from  
40 beginning to end and see where things fell apart, although the result of  
41 that [could vary]. It would almost have to be an interdisciplinary audit.  
42 But the fact that [cases fall apart so often] is a very relevant fact.

43 Why is the sieve so leaky? I don't know if that's within the  
44 purview of this organization or not, but it's a big problem. Prison  
45 overcrowding's the other one. Our judges say prisons are already  
46 overcrowded. Where are we going to put them?

47 **Mr. Reaves:** I'm just looking back at Brian's suggestions of things to  
48 look at. He suggests we look at the relationship between police practices

1 and the leakage rate. I just wonder if these police information systems,  
2 like COMPSTAT, tell us that much about the police practices. Or do they  
3 really tell us more about crime and what's going on in the community?  
4 I'm just wondering if we can evaluate what the police are doing through  
5 this information that we would like to get.

6 **Mr. Frazier:** I think you'd have to go to the prosecutors' offices and ask  
7 them why they declined or plea bargained or what have you. I don't  
8 think police practice is all of it; it's half of it.

9 **Mr. Forst:** LEMAS provides a lot of the input information, and if we  
10 could match the LEMAS input data with lapses at each stage—the  
11 performance measure would be leakage at each stage—then we could  
12 separate those out and parse out the analysis. But I think that it really  
13 comes down to inputs versus outputs at each stage and the data are there  
14 but it would require some effort to merge them appropriately, and there  
15 are going to be different kinds of merging for different kinds of issues.

16 But it seems like there are enough smart people in this room to  
17 be able to start to figure out some solutions and, as I say, just take it one  
18 step at a time.

19 What can we do with what we have that we're not doing and  
20 that will solve some of these problems? The opportunity for improvement  
21 is so huge, it would seem a shame not to exploit the opportunities that are  
22 there.

23 **Mr. Reaves:** So, you feel like a lot of the information we get in LEMAS  
24 really does get at this issue of police practices already?

25 **Mr. Forst:** Yes, and to the extent that it doesn't, we would [make  
26 progress] just in asking the question, at this stage, "what is it that's  
27 needed?" And detectives know what they need to solve a crime and make  
28 an arrest. They know what it takes to make an arrest into a conviction  
29 working with a prosecutor. They know what kinds of witnesses are most  
30 important, what kinds of tangible evidence are most important at each  
31 stage. They know whether there's enough capacity in the court system to  
32 be able to effectively use all this information.

33 So, very often the information's there, but the capacity at some  
34 adjacent level in the system is not appropriate. And the story differs from  
35 place to place. So, it's complicated, but some things are pretty universal  
36 and one thing that keeps emerging here is fear—fear of victims to come  
37 forward and help the police to know about crimes and then solve them.  
38 And that's a problem that can be addressed as well.

39 How can we reduce fear? What is it that the police can do about  
40 that problem? What is it the prosecutors can do? And certainly we need  
41 to know more about focusing on offenders who are particularly bad and  
42 are creating a lot more fear in the community than others. How pervasive  
43 is that? What can be done about it?

44 But there are clearly solutions to a lot of these  
45 problems. There are just so many different problems, it's hard to know  
46 where to begin. But we know the dimensions of the problem at each stage  
47 and we should start large and then drill our way down, it seems to me.

48 **Ms. McCoy:** I am Candace McCoy from the City University of New

1 York.

2 I was struck, when I was preparing to come here today, with  
3 how well Brian's paper spoke to Ted Eisenberg's paper. If you're going  
4 to talk about leakages and what happens to cases and the assumption that  
5 we just don't know once these cases leak out of the system—they get  
6 dismissed; is that good or bad? And we don't know why, we don't know  
7 what happened to the victim, we don't know how the victim feels. If we,  
8 in a perfect world, could listen also to the civil justice system, which  
9 Professor Eisenberg is going to talk about this afternoon, on the lower  
10 level of crime seriousness in the crime funnel (I'm not talking about the  
11 really violent guys and the recidivist violent guys—that's a different  
12 thing but on the lower level—especially property crimes and drug  
13 crimes—we might find that once the cases leak from the criminal system,  
14 they get addressed in other systems: civil justice systems, naming,  
15 blaming, claiming, insurance, health systems, mental health controls.

16 We just don't know. So, the leakage problem is real but I just  
17 would suggest listening to other database people about non-criminal  
18 statistics that could really help explain.

19 **Mr. Forst:** I agree.

20 **Mr. Reaves:** Well, it brings up the issue that we know that all this fits  
21 together somehow from the police through to the courts, but do our  
22 datasets really link together in any way?

23 I think the only example that comes to mind is the Police Public  
24 Contact Survey where we use the NCVS to look at what the police are  
25 doing—police practices—but I get the idea here we need to do a lot  
26 better job of somehow fitting these different pieces together. Maybe  
27 that's overwhelming to think about right now, but something we'll need  
28 to look at, I think.

29

30 **Mr. Ramker:** Good afternoon. My name is Gerry Ramker. I'm with BJS.  
31 It's my pleasure to introduce the luncheon speaker today. Her name is  
32 Joan Weiss, the current Executive Director of the Justice Research and  
33 Statistics Association.

34 Joan has been in that position for a number of years. It is a professional  
35 association of the state statistical analysis centers, and I think Joan will  
36 give a little background on that, as well.

### 37 **State Statistical Analysis Center (SAC) Uses of BJS Data**

38 **Ms. Weiss:** Thank you, Gerry. It's a pleasure to be here, and I really  
39 appreciate BJS putting on this workshop, and the opportunity to talk to  
40 all of you for a few minutes.

41 This is a luncheon presentation, is what Gerry said, and when  
42 Maureen called me and asked me to do this, she said, "Would you give a  
43 presentation at lunch?" and I hesitated before I said yes, which she will  
44 attest to.

45 I've put on national conferences for almost 25 years. And I can  
46 tell you that one of the key things about putting on a national conference,

1 or putting on any kind of meeting like this—to make it successful—is  
2 you want a luncheon speaker who’s going to be scintillating,  
3 entertaining, who’s going to be inspiring, right? You want a lunch  
4 presentation that’s going to capture the audience.

5 So, here’s my topic. State Statistical Analysis Center Uses of  
6 BJS Data. Now, that’ll do it, right? So, you see how I got you to laugh?  
7 That’s it for the presentation. That’s the last laugh, right?

8 I do think the topic is important, but this is an informal  
9 presentation. Informal means brief and no PowerPoint slides. I’m just  
10 going to talk to you. But before I get into the topic I do want to say a  
11 couple of words about things that came up for me this morning listening  
12 to the law enforcement issues.

13 I’m fortunate to know a lot of you in this room, many through  
14 JRSA, but some of you from my prior life where I ran another national  
15 organization, and I worked with law enforcement agencies throughout the  
16 country, and it’s interesting.

17 When I was listening, there are a number of things that came up  
18 for me, but one of the things that I remembered—and you know how it is  
19 when something comes to you that you haven’t thought of in years, and  
20 you just needed something to trigger it?

21 There was discussion this morning about the things that law  
22 enforcement agencies have no control over. Crime goes up, crime goes  
23 down, police are blamed or they take credit. And so many things they  
24 have no control over: the economy, demographic changes, etc. I  
25 remembered something from a course I took as an undergraduate. It was  
26 a sociology course. I can’t remember whether the book was Talley’s  
27 Corner or Street Corner Society, but there was a footnote in the book  
28 about a tremendous increase in crime in D.C. after a certain event. A  
29 question was asked about the footnote on the exam (which was why I  
30 always remembered it). The question asked what event triggered the  
31 crime.

32 You had to pick which event. I had read the footnote (because  
33 I’m compulsive) and so I knew the answer, but very few students did.  
34 The correct answer was that the surge occurred after 3 weeks of non-stop  
35 rain.

36 No one this morning mentioned weather as something the police  
37 have no control over, but in fact, anybody who’s ever dealt with crime  
38 knows that, if people in a city are cooped up for 3 weeks straight, the  
39 minute the rain stops, you’re going to have an increase in crime. Now, if  
40 you’re smart, then you’ll do something to prepare for that. Otherwise,  
41 you can get sunk.

42 Okay. I do think that the topic of state uses of data by statistical  
43 analysis centers is an important one, and I want to share a little bit about  
44 it for two reasons.

45 One, I have a feeling that a lot of you in the audience don’t  
46 know anything about SACs, and you should (I have no bias on that topic,  
47 of course) but the other is because we talk a lot about federal-level data,  
48 and a lot about local data, and we’re talking about police departments,  
49 but there’s not a lot of discussion about state-level data.

1 JRSA, as Gerry said, is the organization of state statistical  
2 analysis centers. There are 53 of them, all 50 states and D.C., Puerto  
3 Rico, and Northern Mariana Islands. We have four SAC directors here  
4 today, I'm pleased to say, and from my right to left is Phil Stevenson  
5 from Arizona, and Kim English from Colorado, and Bill Clements from  
6 Vermont, and Sue Burton from Florida. Sue is the current president of  
7 JRSA, and I invite all of them to get up to the mics and give examples  
8 after I finish talking, if they have ideas that they want to share.

9 The SACs are unique in that they cut across the justice system.  
10 The purpose of the SACs is to collect, analyze, and disseminate justice  
11 system information for policy purposes.

12 They are located in different places. About two thirds are  
13 located in the state administrative agencies, and they are co-located with  
14 a lot of other functions. In some states, they're actually located in  
15 academia, and in some states, they're located in departments of law  
16 enforcement or public safety. It just so happens we have all the different  
17 representations here today in the four SACs who are here.

18 What they have in common is that, unlike individual justice  
19 system agencies, they cut across the system. Someone this morning, I  
20 think it was Richard Schaufli, mentioned that one of the advantages of  
21 this discussion today is the cross-pollinating of ideas.

22 So often, we're only with people who are involved in the same  
23 aspects of the justice system that we are. Well, the SACs provide cross-  
24 fertilizing and cross-pollinating at the state level. They don't deal just  
25 with law enforcement data, or court data, or corrections data. They deal  
26 with all of the above for policy purposes.

27 We have a very close working relationship with BJS. In fact, in  
28 1974, BJS and the handful of SACs created JRSA, then called the  
29 Criminal Justice Statistics Association, and the BJS legislative mandate  
30 includes providing support for state statistical services. And therein lies a  
31 close affiliation, and we do a lot of work together.

32 SACs use BJS data in many ways. When we e-mailed SACs a  
33 couple of months ago to provide some information to the National  
34 Academy of Sciences panel, we asked them for specific examples. Many  
35 SACs responded with a blanket, "we use BJS data all the time." Now this  
36 is at the state level. We use data all the time. They find BJS data critical  
37 to their work.

38 So, what are the ways in which SACs use data? (Because I think  
39 that those ways are instructive.) First and foremost, for national and state-  
40 to-state comparisons, that is, as benchmarks. SACs use these  
41 comparisons in legislative briefings for the state legislatures, for fiscal  
42 and other impact statements. They use them in annual reports for public  
43 dissemination or for education. They use them to provide policymakers  
44 in their states with information, to advisory councils.

45 The BJS data provide a context for the data at the state level—a  
46 context and a perspective. The SACs use arrest and victimization data. I  
47 know Colorado and Florida specifically mentioned that. They use  
48 corrections data, such as the Census of Jail Inmates. Kentucky mentioned  
49 they use that all the time. Probation and parole data, the Prosecutor  
50 Survey, LEMAS, court case processing.

1 I'm going to highlight a couple of examples just so you can see,  
2 how these data are used. In Illinois, they recently published "Trends and  
3 Issues," which is something they've published for, I don't know, 25 years  
4 or something like that. Both Gerry and Phil are former Illinois SAC  
5 directors, and the Illinois SAC director said they used several different  
6 BJS publications in the publication of their 2007 "Trends and Issues."

7 They used the data to fill in correctional information that was  
8 not reported by the Illinois Department of Corrections, or was reported,  
9 but not necessarily reported using the same measure; and they  
10 commented that BJS publications and research are very good at that. The  
11 BJS reports provided data on prison capacity, mental health, HIV, parole,  
12 and federal prisoners that the SAC could not find anywhere else.

13 Arizona: I know Phil mentioned to me that they used BJS data  
14 recently to fill an information request, because they had someone  
15 requesting information on incarceration rates and counts that they did not  
16 have available. BJS data did have the information available.

17 So, the single most prevalent use by SACs really is national  
18 comparisons—comparing with the national data. In fact, some states said,  
19 "when we do something new, we look at BJS data to see if we're in the  
20 ballpark, to see if our data makes sense." It's almost the first check for us  
21 of whether we can trust our data. So benchmarks, the national and state  
22 comparison is primary.

23 Next, BJS data are used as a model at the state level as a basis  
24 for doing state level research. So the Victimization Survey is one place.  
25 A lot of states use the NCVS (National Crime Victimization Survey) as a  
26 guide for their own state Victimization Surveys, and in fact, some states,  
27 such as Vermont, actually use the BJS NCVS software to do its statewide  
28 Victimization Survey.

29 BJS data collections inform and guide Wyoming in their  
30 Governor's Substance Abuse and Violent Crime Advisory Council  
31 concerning the needs. They used BJS data to tell the Governor's  
32 Advisory Council what the needs would be so that they can plan on the  
33 state level.

34 So, it's modeling the data collection efforts that BJS is doing,  
35 and also to provide guidance to existing bodies in the state, and also to  
36 copy the research methodologies, quite frankly. No one wants to reinvent  
37 the wheel, and BJS has spent a lot of time and effort developing these  
38 methodologies.

39 So benchmarks, as a model, and third, planning and forecasting  
40 for state estimates. In Oklahoma, they had a bill. I'm going to read this  
41 verbatim.

42 "We had a bill that would require an offender to serve 85  
43 percent of his or her sentence before parole eligibility, if that offender  
44 was in possession of a firearm at the time of a crime. The sentencing data  
45 we collect for Oklahoma do not often contain information on firearm  
46 possession. So we applied an estimate from a BJS report to our  
47 conviction data. The Firearm Use by Offenders, November 2001. We're  
48 finding more and more that we can utilize the estimates from BJS studies,  
49 and apply them to our bill impacts."

1           So planning at the state level, in spite of the fact we're talking  
2 about national data—just as with national level you have tremendous  
3 budget constraints, and if you have data that you can extrapolate from,  
4 you do. So that's benchmarks as a model for planning and forecasting for  
5 estimates.

6           Four. Quality control. Several states use the Records Quality  
7 Index to assess the quality of the criminal history records, and to make  
8 improvements in their criminal history records.

9           It's critical to have quality control. And we're working very  
10 hard, and we actually have two multistate studies with BJS right now to  
11 improve criminal history records. There are 11 states involved in this  
12 effort.

13           We must have accurate criminal history records (and they're  
14 really abysmal in terms of quality in many states). I don't know how  
15 many of you have used criminal history records, but unless we have  
16 accurate information in the criminal histories—and eventually, hopefully,  
17 comparable data across states—then we're going to be missing a major  
18 piece that is critical for this decision making. We're making decisions  
19 based on information that is inaccurate, and that makes the decisions that  
20 we make inadequate. So that's four, quality control.

21           The fifth is to tackle new topics and issues. Many states said,  
22 and Idaho was an example, when they talked about the impact of  
23 mentally ill offenders on the system, a lot of SACs go to BJS data first,  
24 go to the reports that BJS publishes in order to look at, "what do we need  
25 to be doing that we're not doing and what are the issues we need to be  
26 focusing on?"

27           Cybercrime and identity theft were mentioned this morning, but  
28 the truth is there are a lot of issues—the elderly, mentally ill offenders—a  
29 lot of issues that a lot of states are behind in tackling. That sounds strange  
30 because there is a lag time in terms of BJS data being published. But the  
31 fact of the matter is, it is critical to the states to be able to look at the  
32 decisions that have been made at the federal level to see what they should  
33 do in terms of tackling new topics at the state level.

34           Could the data be more valuable to the SACs? Of course. Many  
35 ways were mentioned this morning. Several reports. I mean, Karen  
36 Heimer in her report talking about violence against women, and Brian  
37 this morning talked about the importance of policing, and Lynn, in her  
38 report, will talk about enhancing the utility of NCVS.

39           Barry Mahoney this morning spoke in terms of court state  
40 processing, and Steve Mastrofski talked about police data. All of these  
41 mentions had to do with having the data be more applicable at the state  
42 and local level. Everybody who has talked about this emphasizes how  
43 critical it is, and how useful it would be to be able to disaggregate BJS  
44 information at the state and local levels.

45           That would be ideal. It would be a tremendous advantage. And  
46 if all the datasets, or a good portion of the datasets made that possible,  
47 then a lot of research questions would be more accessible, and a lot of  
48 comparability issues could be addressed.

49           So we would like to see that as a goal, too. However, the

1 primary message that I wanted you to hear from me is about the  
2 importance of BJS data, and the importance of the BJS mission to the  
3 states. There is no other resource that meets the wide range of state needs  
4 that BJS data address.

5 This is particularly true of the ongoing data collection series,  
6 and it is critical that all of us who appreciate this fact continue to make  
7 the point to those who have the power to do something about it.

8 We also have a responsibility to educate our own communities  
9 of constituents about the uses of BJS data. I am intrigued by the fact that  
10 I frequently will get a call because JRSA comes up on somebody's  
11 Google search. If you Google a lot of subjects, I'm glad to say that JRSA  
12 comes up; and, by the way, the JRSA website provides access to all the  
13 state statistical analysis centers at [www.jrsa.org](http://www.jrsa.org). Easy to remember. We  
14 don't collect and analyze data, except for some multistate studies,  
15 ourselves. We actually defer to the states. What we do is link to states.

16 We get a lot of information requests. People all over the country  
17 calling or e-mailing, and saying, "where do I find this, and where do I  
18 find that?" And even SACs call because it's easier for them to call me  
19 many a times than to go on our website and look for something. One of  
20 the things that intrigue me is how few people know the data that are  
21 available on the BJS website, and even more that many of the datasets are  
22 now searchable online.

23 People are fascinated when I tell them. They didn't know that. It  
24 is incumbent upon all of us who use BJS data, and know what's available  
25 through BJS, to educate our communities of constituents. This is, after  
26 all, a data users workshop. So those of us in this room who represent a lot  
27 of different groups, I think, have a responsibility to do that.

28 I also want to make a pitch for not assuming that tight budgets  
29 and budget cuts mean that we can't expand what BJS is doing. The  
30 typical answer in response to, "let's be able to get more of BJS data at the  
31 state level, let's make the data able to be disaggregated for the local  
32 police departments," the response (and Brian said it in his paper) is that  
33 you've got all these competing needs. Jeff Sedgwick this morning talked  
34 about increasing responsibility without accompanying increase in budget.

35 And yes, that's true. But that doesn't mean we can't hope, and it  
36 doesn't mean that we can't try. This year, the 2009 budget, everybody  
37 else got slammed, and what do you know, BJS, at least on the first round,  
38 BJS has a little bit of an increase. That would be very nice if it would  
39 happen.

40 I think that level funding over all the years of BJS history,  
41 coupled with the kinds of examples that we've heard today and will  
42 continue to hear today, provide a powerful argument for expanding the  
43 scope of BJS data collection efforts.

44 All of us in this room know that BJS is a bargain. The return for  
45 the money, the amount of money that BJS has—someone—I can't  
46 remember who it was this morning that used the analogy. Brian, maybe  
47 it was you.

48 If we solve the crime rate, if we decrease crime, the savings  
49 would be well worth it in terms of the kind of expenditures we're talking

about; but the fact of the matter is, we currently get tremendous value for federal dollars out of BJS, and there is the incredible potential of having more.

We've heard some ideas. We will hear some more ideas. There's no reason that we have to assume that, just because budgets are tight, that we have to accept that BJS can't be a recipient of expanded mission, and expanded funding. It just takes the right arguments to the right people at the right time, or over a period of time. I want to end on a hopeful note by saying that, anytime I think about all these competing needs for money, I think, instead of trying to decide how to use best the money that BJS does have, and giving them ideas, why shouldn't we shoot for expanded funding, and expanded capability?

There's a story, probably apocryphal, about a president, early in our history, who wanted to plant a tree on the lawn of the White House. He called the official gardener and said, "I read about this Japanese tree, this flowering tree that I think is just beautiful. I've seen pictures of it, and I want to plant one of those on the lawn of the White House." And the gardener said, "well, I need to do some research on that," and came back to the President and said, "I'm sorry, Mr. President, this is really not a good idea, because this tree takes a hundred years to bear fruit." So the president said, "well, we better begin immediately."

The truth is that it could be incremental. It may be that we won't get everything we want all at the same time, and we have to work for it for a long time, but that doesn't mean that we shouldn't make the case for it.

I really appreciate your letting me tell you a little bit about the state use of data, and I invite the SAC directors to chime in, and add some examples of their own.

Thank you.

## Session 2: Victimization

### Current Issues in Victimization Research and the NCVS's Ability to Study Them

**Mr. Rand:** Good afternoon. Hi, I'm Michael Rand. I am Chief of Victimization Statistics Unit at BJS, and Victimization is the topic for this afternoon's first discussion.

I think the papers, the focus of the papers is going to be primarily the National Crime Victimization Survey, which is, of course, the BJS premier program in that area.

We're celebrating the survey's 36th year in the field this year. We've undergone one redesign back in 1992. In recent years, the survey's been plagued by issues related to budget cuts—we've had to make changes to keep the survey in the field because of these financial pressures.

As a result of that, in order to keep it viable into the future, we're beginning a process of redesigning the survey—not just the subject matter, but also the methodology. Toward that end, we asked CN STAT to do a review of the survey and make some recommendations for us, and

1 we received the report late in December.

2 We're in the process now of developing a program to do some  
3 research toward improving and changing the methodology. We want to  
4 help the survey do better what it does, and this effort today, I think, is a  
5 good extension of that—looking, not necessarily at the methodology, but  
6 at what the survey measures, and how we can improve the coverage in  
7 the kinds of crimes, the kinds of events, the kinds of information about  
8 crimes and victims that we collect.

9 And we've got four great people on the panel. Lynn  
10 Addington is an Assistant Professor at the Department of Justice, Law  
11 and Society at American University. She holds a Ph.D. in Criminal  
12 Justice from the University of Albany, a JD from the University of  
13 Pennsylvania Law School, and a B.S. from Northwestern University.

14 Her research interests include the nature of violent crime, and its  
15 impact on victims, the measurement of crime and the utilization of  
16 national crime statistics, and she's the co-author with Jim Lynch of a  
17 great volume on the Divergence of NCVS and UCR, of which they very  
18 nicely asked me to contribute a chapter. So, there's my disclosure for the  
19 day.

20 She's the lead author of Are America's Schools Safe: Students  
21 Speak Out, which was published by the Department of Education, and  
22 her articles have appeared in numerous journals, including JQC,  
23 Homicide Studies, Journal of Contemporary Criminal Justice, and Justice  
24 Research and Policy.

25 Second paper is by Karen Heimer, who's a Professor of  
26 Sociology and Public Policy at the University of Iowa. She received her  
27 Ph.D. from the University of Wisconsin-Madison, and has conducted  
28 research on juvenile delinquency, imprisonment trends in the United  
29 States, women and crime, and violence against women.

30 She's the co-editor with Candace Kruttschnitt of Gender and  
31 Crime: Patterns of Victimization and Offending.

32 Recently, she and Janet Lauritsen received a 2-year grant from  
33 NIJ to study trends in violence against women.

34 And we have two great discussants, as well. Mary Lou Leary is  
35 Executive Director of the National Center for Victims of Crime, the  
36 nation's leading resource and advocacy organization for victims of crime,  
37 and we're thrilled to have her here to give that perspective.

38 She joined that organization in December of 2004, after  
39 spending time as the Acting Assistant Attorney General at OJP, and held  
40 many other functions in that organization, as well, where she oversaw the  
41 Department's Office of Victims of Crime and the Office of Violence  
42 Against Women.

43 And finally, Ms. Jacquelyn Campbell, who's at the Johns  
44 Hopkins University School of Nursing. She's a national leader in  
45 research and advocacy in the field of domestic and intimate partner  
46 violence, and her studies have paved the way for a growing body of  
47 interdisciplinary work in the disciplines of nursing, medicine, and public  
48 health, and she's written more than 150 articles and seven books, and her

1 history with BJS goes back many years when she helped us conduct a  
2 study of injuries treated at hospital emergency departments.

3 And without further ado, first paper is by Lynn:  
4 Current Issues in Victimization Research and the NCVS's Ability to  
5 Study Them.

6 **Ms. Addington:** Great. Thanks a lot, Mike, for that introduction, and my  
7 goal is to keep my remarks short, because I want to stimulate discussion,  
8 not monopolize it. But then I'm an academic, so give me a little leeway  
9 there, as Jeff was talking about this morning.

10 And I'm hoping that you'll notice there are a number of themes  
11 that will be developed continuing from this morning that will continue  
12 with our panel, as well, which I find very encouraging in some ways—  
13 that we're all like-minded in these various topics that we're dealing with.  
14 Also I'm planning on just basically giving an overview of my paper,  
15 since people had those papers already, but I also know, if you're like me,  
16 your best intentions of reading papers aren't necessarily what actually  
17 happens.

18 So, I'll give a little bit of an overview, and highlight a few  
19 themes that I think are particularly important, and I also want to thank  
20 BJS for this opportunity to step back and look at the research more  
21 broadly. It's unique, as an academic, as a researcher, to really look at the  
22 field more broadly, and with the idea that we don't usually have of  
23 improving data sources that we use. So, I thank BJS for this opportunity.

24 Given the 35 years that Mike had mentioned, the 36 years that  
25 the Crime Survey has been in the field, and the 15 years since the  
26 redesign, I think this workshop is a very good, and a very much needed  
27 opportunity to examine how the survey has been and could be used in its  
28 current form, as well as possible ways to change the survey, to explore  
29 new areas of data users' needs.

30 When Allen Beck contacted me to participate, he said, "Would  
31 you please look at current issues and trends in victimization research?"  
32 And I said, "Okay." He said, "Well, but Karen Heimer will do violence  
33 against women, so that narrows it down." And I said, "Oh, okay. No  
34 problem then."

35 So, since I have that rather broad charge of looking at  
36 victimization research trends and current issues, and how the NCVS can  
37 address those, my presentation will be more examples and illustrations of  
38 how it can be used, rather than an exhaustive dissertation of uses of the  
39 survey, and I'm hoping it provides a launching point for our discussion  
40 this afternoon.

41 Also, I'm going to focus on new areas for the NCVS. My  
42 concern is that this isn't meant to be negative towards the NCVS. Full  
43 disclosure: I've received two grants from ASA and BJS to look at the  
44 NCVS. I am an enthusiastic user of the data, and so my feeling is that the  
45 NCVS has given us a lot of the information we know about victimization  
46 to date, and in order for it to continue to be the centerpiece of what we  
47 know about victimization research, it really needs to change.

48 It needs to facilitate what the data users' needs are, and I think  
49 this is a great opportunity for it to do so. So my comments are made in

1 that spirit.

2 As I said, what I want to do is look at the current issues, and  
3 how we can implement changes. So, by way of a roadmap, I want to look  
4 at trends in research in victimization to date. I'll look at four "new" areas,  
5 and I put new in quotations, not to suggest that these are actually new  
6 victims, or new types of victimization, but that the attention given to  
7 them is new.

8 So, when we talk about new victims, I think an important  
9 consideration for this workshop is to assess the NCVS's ability to study  
10 these victims, and to do that, I've subdivided the new victims into three  
11 groups: 1.) those victims who are captured by the NCVS Survey as it  
12 stands now, 2.) those who are not, but could be in the format of the  
13 NCVS or household-based survey, and 3.) those victims who are not  
14 captured in the NCVS, and could not be captured in a household survey  
15 like the NCVS. (To the extent that we're interested in the third group of  
16 victims, BJS would have to consider alternative forms of data collection.)

17 For all of the elderly repeat victims, vicarious victims, and  
18 immigrants, the idea is that the NCVS captures these victims, but if this  
19 is a victim group that is important to focus upon, we might need changes  
20 in the NCVS to better access these data.

21 So, for example, the elderly were mentioned this morning. Elder  
22 abuse, victimization against the elderly, is becoming of greater concern  
23 nationally as well as at the state and local level. NCVS captures  
24 information about adults of all ages—anyone over age 12—in the  
25 household. So we have those over age 65 traditionally defined as the  
26 elderly, but the NCVS, because of how it characterizes the household  
27 sample, does not include family members who are nursing home  
28 residents. So those very vulnerable individuals are not included in the  
29 Crime Survey.

30 Also, with the sample size, we might not capture enough elderly  
31 individuals to really do comparisons, maybe across where they live, those  
32 who live at home, those who live with a caretaker, those that live in  
33 assisted living, or non-traditional nursing home facilities that would be in  
34 the NCVS sample.

35 We might want to enlarge the sample to allow multivariate  
36 modeling comparison across subgroups, or that sort of thing, and also,  
37 with regards to crimes that are relevant to this population.

38 We'll talk about new types of crime in just a second, but fraud,  
39 abuse, neglect, that sort of thing—those might be important to capture in  
40 the NCVS. So while we capture the elderly, that type of information  
41 might be important to access that we don't get right now.

42 And similarly with repeat victims, I won't go into too many  
43 details about that. We do get serious victimization, but we don't get a lot  
44 of information as to how those incidents are linked together, for example.

45 Vicarious victims are identified and included in the NCVS, but  
46 individuals who are in a household with somebody else who's victimized  
47 aren't asked any questions to follow-up. How did that victimization  
48 affect you? How did that victimization affect your household? Because  
49 there are effects of the victimization beyond the direct victim. And

1 consider immigrants, certainly around the D.C. area there have been a lot  
2 of headlines about people being targeted because of their perceived  
3 illegal immigration status.

4 Of course, these people are included in the survey, not  
5 identified. We don't ask citizenship questions in the Crime Survey. One  
6 could question whether starting out a federal survey, "Hi, I'm from the  
7 government. I'd like to know if you're an illegal immigrant." might be  
8 the best way of accessing this information. But still, I include that just as  
9 an example there.

10 And then also with victims within the scope of the NCVS, but  
11 not currently collected, children under age 12. Would we want to lower  
12 that? Are we interested in issues about bullying, childhood victimization,  
13 maybe some kind of abbreviated NCVS-type instrument to get at these  
14 individuals, or for particular issues, like bullying. Right now, we only ask  
15 questions of those in the household above age 12.

16 With regard to victims who are not captured by the NCVS, or  
17 are outside the scope of a household survey, again—if we want to study  
18 these issues—it would just mean that we'll have to find an alternative  
19 data source, that these individuals aren't necessarily best captured in a  
20 household survey.

21 Take, for example, highly mobile individuals. These are a very  
22 important group to look at because initial research suggests that those  
23 who are more mobile—move more frequently than every 6 months,  
24 which is what would be captured in the NCVS—experience a greater  
25 level of victimization than those who are more stable. And those who are  
26 more stable are the ones in the Crime Survey.

27 Understanding this population group would be important to give  
28 a better picture about a high-risk group. But because this crime survey is  
29 a survey of households, we don't follow people who move in and out of  
30 the household. We would need to follow individuals to do that. So, we'd  
31 need to change to a longitudinal survey.

32 This suggestion, of course, is not new. It's been around since the  
33 redesign, and probably before that. So that's something to consider,  
34 whether to change to a longitudinal survey, or even a supplement of  
35 individuals—take a sample of individuals and follow them and see  
36 whether this is something that we'd want to explore with the Crime  
37 Victimization Survey.

38 Other victims outside the scope of the NCVS include  
39 individuals in jail. BJS does a wonderful job with the prison data but  
40 individuals in local jails are, by and large, excluded from these data  
41 sources, as are businesses.

42 Originally, the National Crime Survey was a series of surveys,  
43 one of which continued on as NCS, and then NCVS. But it also included  
44 a business crime survey aspect that was discontinued for a number of  
45 reasons. The question is, should we revisit this? Is underreporting by  
46 businesses or particular businesses important?

47 BJS is including this with regard, or starting to look at this with  
48 regard to computer crimes, but it's something to consider, again, as a new  
49 trend.

1 With regard to new places, most of these aren't new. It's mostly  
2 a renewed interest, and a continued need for data in these areas. We do  
3 have NCVS data for, actually, most of these, but I think that changes  
4 need to be made to make this data even more effective to study these  
5 places.

6 Campus crime has longstanding interest of researchers. With the  
7 Virginia Tech shootings there is renewed interest in campus crime and  
8 what's going on there.

9 Workplace violence. There is increased interest in low-level  
10 types of violence that affect the environment of the workplace because of  
11 threats, because of bullying that's going on at work. And this is no  
12 surprise, given our discussion this morning. Some national estimates of  
13 crime, and also Joan's discussion over lunch, indicate that this is very  
14 important to understand local crime patterns, local victimization patterns.

15 What's going on at these levels that will help us both target  
16 effective policies and also evaluate those policies? Are they effective in  
17 what we want done to lower crime and victimization?

18 And how about national trends? We're seeing some areas  
19 increasing in crime and some areas decreasing in crime. Understanding  
20 local types of crime would help us understand and get a better read on  
21 national trends of what's going on with our crime data and criminal  
22 activity.

23 And again, this is something where the NCVS and BJS have  
24 provided some data, but not a great deal of it, and not very consistently.  
25 For example, with the NCVS, because of sampling procedures, we are  
26 able to drill down (to use that terminology) for the three largest MSAs,  
27 but beyond that, we really can't do too much with the Crime Survey.  
28 There was the 12-City Survey, which basically took the Crime Survey  
29 into 12 jurisdictions in 1998. That hasn't been replicated, but did lead to  
30 the Crime Victimization Survey software, which has had some areas  
31 utilizing it, as Joan mentioned, but other jurisdictions not being too aware  
32 of that kind of resource.

33 And, just briefly, there are the new crimes. You could probably  
34 pick any new crime that you'd like to add to this list, because everyone  
35 has their particular favorite here, but the NCVS does have a few  
36 attributes that let us access or create—gather information on new crimes  
37 that aren't currently covered by the Crime Survey.

38 One is its binary attributes. It doesn't ask you, "were you  
39 robbed?" but asks you characteristics of that victimization incident, and  
40 allows us to characterize new crimes that aren't necessarily the UCR  
41 traditional crimes, such as carjacking, that was done in the 1990s.

42 And also, it collects additional information through  
43 supplements, and the ability to add new questions. So, that's a few of  
44 those that we could study with additional questions.

45 The cybercrime issues: fraud and identity theft. The NCVS has  
46 added questions to the household survey about identity theft, but there  
47 are other forms of fraud, as well and bullying. The school crime  
48 supplement to the NCVS does include bullying questions for juveniles.  
49 As I mentioned before with workplace violence, the ideas about bullying,

1 intimidation, stalking, might be worthwhile to explore for adults, as well.

2 I want to spend a little bit of time talking about explanations of  
3 victimization. Unlike the prior three trends, this is really a broader issue  
4 of current and continued interest for victimization researchers—the  
5 ability to better understand victimization and explain why certain  
6 individuals are victimized. Getting at this information allows for better  
7 theoretical explanations, and more effective policies.

8 The problem is that, traditionally and currently, the NCVS  
9 doesn't provide much explanatory context. And so the suggestions that I  
10 have here are ones that would help explain victimization, and could be  
11 implemented in the survey with additional questions, either new  
12 questions, or a supplement.

13 The first one is asking the respondent why he or she was  
14 victimized. Surprisingly, this follow-up question has never been asked on  
15 the NCVS, and is important to provide a context for victimization. Was  
16 the person victimized because they were randomly attacked on the street?  
17 Was it an ongoing dispute? Was it a victim who actually was going to the  
18 assistance of somebody else? This provides a different context for  
19 victimization and explanations of criminal victimization.

20 The repercussions of and responses to victimization. The NCVS  
21 does get quite a bit of information about the immediate repercussions of  
22 victimization, but what about long-term repercussions of victimization?  
23 Fear, mobility, dropping out of school, those kinds of ramifications of  
24 being victimized.

25 Fear of victimization. We talked about this earlier this morning  
26 with regard to reporting to police, being willing to be a witness, and  
27 giving information to police.

28 I include fear separately as its own category rather than a  
29 repercussion, in order to emphasize the fact that it's important to gather  
30 this information from both direct victims, and those not directly  
31 victimized. In this way we will have a better picture as to what's  
32 generated from the victimization incident, and what's generated from just  
33 more general fear of street crime, of terrorism, of going to the mall,  
34 staying at home, going out at night, that sort of thing.

35 And there are alternative crime classifications to provide ways  
36 of comparing victimization in different contexts (outside of the  
37 traditional UCR crimes) and additional explanatory variables.

38 This is a perennial problem when you talk to victimization  
39 researchers. They say, "why don't you use the NCVS?" And I ask my  
40 colleagues, "why don't you use the NCVS?" The answer is that there's  
41 nothing to explain victimization. There aren't enough independent  
42 variables.

43 So, getting additional information for explaining victimization is  
44 really essential to increase the number of users, and increase the utility of  
45 these data.

46 With regard to my suggested changes for the NCVS, two  
47 categories: one targeting more the NCVS and the data provided, and one,  
48 if I'm bold enough to say, change to the BJS.

1 With regard to changes to the NCVS itself, add questions to the  
2 survey. Many of the examples I've provided suggest that we could get  
3 this information with more questions, or topical supplements.

4 Now I know this sounds simple, and it's easy for me to say,  
5 "hey, add a few more questions." I also realize that this is difficult. Not  
6 only, as Joan mentioned, if we could get more money for BJS, but  
7 respondents and interviewers have a finite amount of time, as well. We  
8 can't just ask a five-hour survey instrument of people and expect them to  
9 come back in 6 months and respond again.

10 So I understand that there's a trade-off. If we add something, we  
11 should drop something. And also, I understand that we need to determine  
12 what questions we should ask. Do we want to know issues about why  
13 people were victimized? Do we want to know the amount of  
14 victimization? Specifically, what information do we want to know, which  
15 leads to a more comprehensive consideration about the NCVS and its  
16 role.

17 I think it is essential at this point to consider what the NCVS  
18 should be doing. Should the NCVS be collecting and measuring crime  
19 and criminal victimization? Or should it be trying to explain  
20 victimization? Or could it do both? The two aren't mutually exclusive.

21 Traditionally, the NCVS has been focused on measuring crime.  
22 But given the trends, and the need for data to explain crime, I think now  
23 is the time to consider seeking more of a balance between the two, and I  
24 say this to 1.) prompt a consideration of what the purposes, are because I  
25 think that's important and 2.) to serve as a roadmap for what questions  
26 we should add, what questions to drop, how to frame questions, that sort  
27 of thing.

28 Also, I feel like a number of changes have been implemented to  
29 the NCVS due to external pressures—Congress, legislation, study this.  
30 The NCVS does a great job, now do more, which is wonderful, but I also  
31 think some of our knowledge should be guided by science and the needs  
32 of data users, as well as legislators.

33 Just a few other things with regard to changes to the NCVS to  
34 study these new issues. Increase the sample size. As I mentioned with  
35 studying the elderly or particular populations, consider a longitudinal  
36 design with regard to studying repeat victims, as well as the  
37 repercussions of victimization, highly mobile victims and, (as I discuss in  
38 my paper) provide access to narrative data to allow researchers to explore  
39 new trends, and new possible explanations for victimization experiences.

40 Two changes that I recommended with regard to BJS (mostly to  
41 ensure that the survey continues to meet user needs). The first is to  
42 institute periodic reassessments to ensure that what we're learning in the  
43 data and what we're learning as researchers, as policymakers, as  
44 practitioners, can be reinvested into the survey itself, so that the survey  
45 can benefit from the information that we've gained. Secondly, ensure that  
46 the survey still meets user needs, and finally, create a partnership with  
47 the data user community.

48 This workshop is unique, and it shouldn't have been, as Brian  
49 Reaves mentioned, in the 20 years he's been at BJS, the first time it's  
50 happened. I think it's important to continue this kind of collaboration into

1 the future.

2 If I were to pick my list of selected recommendations, these are  
3 the ones I would focus on: explanatory contacts for victimization,  
4 collaboration between BJS and the community of data users, and the  
5 periodic reassessments of NCVS.

6 **Mr. Rand:** Thanks, Lynn. Karen Heimer will now switch focus a little  
7 bit to Violence Against Women.

8 **Understanding Violence Against Women Using the NCVS: What We**  
9 **Know and Where We Need to Go**

10 **Ms. Heimer:** Thank you. I was asked to write a little discussion paper on  
11 the topic of studying violence against women using the NCVS, and I'm  
12 actually a relative newcomer to using the NCVS. I've used lots of other  
13 different kinds of datasets, and I'm pretty new to the NCVS, but I've  
14 become a wholehearted supporter, so I'll kind of give you that caveat  
15 first. I think it's a great dataset that offers a lot.

16 I was interested to see that Lynn and I actually came up with  
17 some pretty similar thoughts about ways to improve the data, and what  
18 the data can offer.

19 I think that the NCVS offers a really useful tool for drawing  
20 attention to violence against women. I think I have a sort of personal  
21 bias, and feel like our discussions of crime in the United States—and  
22 particularly crime trends—tend to overlook the importance of women in  
23 this equation. I think that the NCVS can be very useful in drawing  
24 attention to studies of violence against women, but we haven't really  
25 reached our potential here.

26 The data haven't been used in the way that they could be, and  
27 some of that has to do with accessibility, I think, and some of it has to do  
28 with content. And I'll say some things about that.

29 I want to give you a little bit of an overview of the kinds of  
30 research that have been done using the NCVS, and then, as part of that,  
31 discuss where we might go from there.

32 The research tends to have taken two forms. Most of the  
33 research has been about describing distributions. That's great. That's a  
34 first step. We need to know what violence looks like across all different  
35 kinds of categories. A lot of that work has been done by BJS, (a lot by  
36 Mike himself,) and this is really great. It's a great start. We still have  
37 some places we can go here.

38 The second stage of research, though, should always be research  
39 that's aimed at explaining these distributions. And I think that is actually  
40 the purview of academic researchers, and I think we've really fallen  
41 down here, and I think there are a couple of reasons for that.

42 I also want to give a little caveat, and say that this isn't an  
43 exhaustive review. There's only so much I can do in the time, and so  
44 there's actually quite good literature on police response to domestic  
45 violence using the NCVS, but I'm not going to talk about that today.

46 And I'm incapable of doing any kind of talk without numbers,

1 so you'll get a little bit of those. First of all, I want to point out a few  
2 things. In describing distribution, we look first at how violence against  
3 women is distributed across crime type, and I think that is something  
4 very important to just sort of start with. What you see here is that the  
5 victimization patterns are not really all that different across men and  
6 women, except in the case of rape.

7 What I mean by that is: the most common kind of violence  
8 against women is the same as the most common kind of violence against  
9 men, which is simple assault, followed by aggravated assault, and then  
10 robbery. The male rates are a little bit higher. Rape is different, and we  
11 all know that. Women are much, much more likely to be affected by rape.

12 The other thing I want to point out is that, if you look at the total  
13 violent victimization rate, (this information comes from a BJS report) if  
14 you look at the total violent victimization rate, you see that there is a  
15 gender gap, males are victimized more than females, but that gender gap  
16 is not nearly what you would expect if you compare that to the gender  
17 gap in violent offending.

18 So, given women's much lower levels of involvement in  
19 offending, they certainly are affected when we talk about victimization. I  
20 think the reason that women have not been included in discussions of  
21 violent crime in the United States in terms of trends and patterns has been  
22 that we focus on offending. We focus on official data, and we ignore the  
23 victimization side of it. But if you really want to talk about crime, you  
24 want to talk about both sides of the coin.

25 There are a couple of areas where we could use some more  
26 information, areas we don't have enough information on. We could use  
27 some more information on the crime of stalking, and Bonnie Fisher has  
28 done a lot of great research on this. This may even be something that we  
29 could study in particular subgroups. There is ongoing information on  
30 stalking in the NCVS.

31 Another area, which I know is very difficult to study, but in  
32 terms of kind of the pain and suffering that it causes in people's lives, is  
33 the issue of sexual harassment and unwanted physical contact.

34 I just finished reading a book that's coming out soon by a friend  
35 of mine named Jody Miller on the violent victimization of inner city  
36 African-American girls in St. Louis. It's hard to get through the book  
37 without crying, but when you read the book, you're just struck by the fact  
38 that life is so hard in terms of the constant physical harassment that these  
39 girls experience in school and on the streets. Girls talk about being afraid  
40 to go outside, and the girls who do go outside and get victimized are  
41 blamed for the victimization because they chose to go out of their house,  
42 or walked home alone from work.

43 A lot of these kinds of things are not going to show up in  
44 surveys of crime because unwanted physical contact may not be reported  
45 as an assault, but I do think it's very important. I don't know if that's an  
46 issue that can be dealt with in the NCVS, but I would love it if it were.

47 Another way that we can look at distributions of violence  
48 against women is across victim-offender relationships, that is, non-fatal  
49 violence against women.

1 Also, people have done a lot of research using homicide data in  
2 terms of violence against women, but in terms of non-fatal violence  
3 against women, a lot of the research has been devoted to intimate partner  
4 violence. I think that's wonderful—intimate partner violence is certainly  
5 much higher among females than it is among males. That's no surprise  
6 because males are the main violent offenders, but this type of  
7 victimization [non-fatal intimate partner violence] is much higher among  
8 females than it is among males.

9 This is definitely a big problem in our country, but I get a little  
10 concerned, somehow, when we think about violence against women in  
11 terms only of intimate partner violence. Because 33 percent of all violent  
12 victimization of women is by strangers, and 36 percent by friends and  
13 acquaintances.

14 So this is something that the NCVS does well. It captures kind  
15 of this wide range of violence, and I think that's very, very important. In  
16 fact, I think this survey is really the best and only way to look at these,  
17 even in the cross section, not even getting to the longitudinal issues.

18 The other very important factor to think about when we think  
19 about distributions of violence is race. Blacks and Native Americans, we  
20 know from the NCVS, have higher rates than other race groups.

21 The rate of violence against Native American women is very,  
22 very high. This is something that's very difficult to study because of the  
23 small numbers in the population. The studies using the NCVS that have  
24 been conducted have had to pool several years of data across years.

25 So I think if there were some ways to kind of target particular  
26 populations, like Native Americans, maybe oversample and get some  
27 more information on this, this would be a worthwhile endeavor.

28 It also turns out that, when we look at violence against women,  
29 again, to the intimate partner versus other kinds of offender issues,  
30 violence against women among blacks and Native Americans is higher  
31 than other race groups. But if you look at intimate partner violence, and  
32 you compare blacks and whites, there's not a huge difference according  
33 to a report by Shannan Catalano, a BJS statistician. This information  
34 comes from her 2007 report.

35 I think that this is an issue that we really need to think a little bit  
36 more about. And the same thing happens with ethnicity. Latinos, Latinas,  
37 much more likely to be victims of violence than non-Latinas, Latinos.  
38 This doesn't hold in the case of intimate partner violence, and so there's  
39 something going on here and it could be because minorities are more  
40 likely to be victimized on the street and in other kinds of public settings,  
41 but with no big difference in the home. Anyway, very interesting, and I  
42 haven't seen a lot of research on that. So this is something that definitely  
43 needs more study, and that's actually a call to researchers.

44 The NCVS is very important for studying violence against  
45 women in terms of longitudinal trends. It is uniquely suited to look at  
46 long-term trends. You can study long-term trends using correct  
47 procedures, which Jim Lynch and others have developed.

48 People haven't done this very often, or haven't done this at all,  
49 and we need to figure out ways to make this more possible for

1 researchers to do in the case of violence against women.

2 Janet Lauritsen and I have been doing a little bit of this work,  
3 and I just want to show you some pictures, because I love pictures [slides  
4 from presentation are not included here]. The blue line is males, the red  
5 line is females, and this starts in 1973.

6 The issue is that, in 1993, the redesign took effect completely in  
7 the NCVS, and there were big changes. So you can't just compare the  
8 early years of data with the later years of data without going through  
9 some very complicated computational procedures. And when we've done  
10 this, and adjusted for these differences due to the redesign, what we see is  
11 that the gap in violent victimization has started to close. And it's  
12 primarily because the male rate has been coming down more quickly than  
13 the female rate.

14 What we've concluded from this is that males have benefited  
15 more than females from the long-term declines in crime.

16 Looking at intimate partner data. This is intimate partner non-  
17 lethal violence from '79, first year we could do that, through 2004. What  
18 you see is that the gender gap is also beginning to close here.

19 Females have always had higher rates in the direction of the  
20 gender ratio line changes, but what you see here is that the reason that the  
21 gap, the primary reason that the gap began to close is that the rates of  
22 violence against women declined in the '90s, and perhaps that just has to  
23 do with other factors that are related to declining violence during this  
24 period in general. We don't know for sure. We need more study on this.

25 And I just want to show you one other quick picture [slide not  
26 included]. We did a conference presentation recently, and we've done the  
27 same kind of trend lines, but pulled apart the non-Latina black, the  
28 Latinas, and the non-Latina whites.

29 A lot of the research to date has looked at only the period from  
30 '93 on. So basically, if you just look at this period, what the research  
31 tended to show is that Latinas' [data] don't look that different than non-  
32 Latina whites' [data] do they? Blacks look really different, but if you  
33 look over the long series, one of the things you see is that's not the case.  
34 Latinas are very different from non-Latina whites over the period since  
35 the early 1970s.

36 The other thing you see is that Latinas, and non-Latina blacks  
37 were much more affected than non-Latina whites by periods of increasing  
38 crime, and so they're not as protected as non-Latina whites. I don't have  
39 time to talk about the males, but that's even prettier.

40 Another way that we can think about these distributions is  
41 across sub-national geographic units. The potential for doing MSA-level  
42 trend analysis is really exciting. We could study long-term trends in  
43 women's victimizations across the large MSAs, and this would give us a  
44 chance, I think, to kind of look at [the influence of] policy changes.

45 You could look at what's happening in one MSA in terms of  
46 policy compared to another MSA over time and see whether there were a  
47 set of policies enacted in one, and not the other, and then whether we get  
48 any kind of difference in the measures of violence against women.

1 Again, part of the problem here for researchers has been access  
2 to data and actually knowing how to use the data. The other thing that we  
3 really need to see, as people keep calling for now, are other kinds of sub-  
4 national analyses with geocoding. With all kinds of geographical  
5 analyses becoming all the rage in social science, that's going to filter in  
6 here.

7 Let me just say a little bit about explanatory research. There's  
8 less to say here because there's less of it. We know, basically, that all  
9 these kinds of factors, and a bunch of other factors, are related to  
10 violence against women in the bivariate case, meaning that the  
11 distribution of violence against women differs, whites to blacks, across  
12 age groups, and across economic status groups.

13 We know that, but we really have no idea how these things  
14 combine to explain violence against women, and that's what I mean by  
15 explanatory research.

16 So do these things have independent effects? How and why do  
17 they matter? That's what we need in order to develop targeted policies.

18 I'm not saying there's no research, but there's not very much.  
19 One example of some research that's been done, again, largely by Janet  
20 Lauritsen and some other folks, has been to say, okay, we know there's  
21 this race difference in violence against women. Let's look more deeply at  
22 that, and in looking a little bit more deeply at that, they've discovered  
23 that it's not about race. It's about what you might expect. It's about what  
24 your neighborhood's like, it's about socioeconomic status, it's about a  
25 variety of factors, like family structure, it's about a variety of factors that  
26 really aren't about race. And if we want to develop policy, we really want  
27 to know what the complexities are.

28 This research has really lagged behind. And when I was trying  
29 to read all this stuff and piece it together, one of the things making me  
30 pull my hair out was that even the research that exists—every study—has  
31 a different set of explanatory variables.

32 The problem with that is you absolutely cannot compare the  
33 effect of race in a study that controls for income and family structure  
34 with the effect of race in a study that doesn't control for family structure.  
35 So I think what we really need, as researchers, is to do more research  
36 using the NCVS, come to some consensus over the standard set of  
37 variables that should be in any study, and this happens in all areas of  
38 criminology.

39 It's sort of a natural progression, and maybe because violence  
40 against women is just a newer area, relatively speaking, it hasn't  
41 happened. But I think it's been a little slower than it should be, and this is  
42 the only way we're going to really start accumulating knowledge about  
43 the complexities of the situations in which violence against women  
44 occurs.

45 The other thing that becomes apparent when you read the  
46 literature is that we really do need to have other measures of social  
47 contexts that are specific to violence against women.

48 We need to have measures of relationship conflict, family  
49 process, cohabitation. That would be easy. I think you could just put that

1 in the household roster. Some of these others would be more complex.  
2 Community ties and social support from the community are not so easy,  
3 and may require something like a supplement in certain years.

4 I think the biggest call here is maybe to the academic  
5 community. We need more research by a wider range of researchers, and  
6 I think, as an academic, I take full responsibility for not doing a better job  
7 of this.

8 However, there are some things that BJS can do to make sure  
9 that this happens, and using the data, after all, is very important for the  
10 future funding of the data (and the increased funding of the data, we  
11 hope).

12 One of the things is to make the data more accessible to a wider  
13 range of folks, and more available. For example, why can't we convince  
14 Census to let us have the area identified codes with the NCVS so that we  
15 can look at issues of neighborhood in the long term? They're available  
16 for 1995, and that's it.

17 There are other very, very sensitive datasets, like the Adolescent  
18 Health Survey data, in which people are located in Census Tract. In  
19 sociology, my home discipline, you cannot walk across a room with  
20 sociologists without falling over the top of five people who are using the  
21 Adolescent Health Survey.

22 Now why is that not the case for the NCVS? I think that we can  
23 trust researchers to [protect] the data. So, if we could somehow convince  
24 whoever makes these decisions that we can actually trust researchers to  
25 [protect] the data .... For instance, my Ad Health Data's in a locked room  
26 with a computer that has no internet connection.

27 The other thing is that I think additions to content, as Lynn said,  
28 are absolutely critical. This might have to come in with the supplements,  
29 but for understanding violence against women, there are unique issues  
30 that will need to come in through supplements. Finally, I think that  
31 government, BJS, NIJ, other organizations could help us along this  
32 road—could help push academics—because, after all, we all know that  
33 academics go where the money is. At universities, once you get promoted  
34 to full professor, all they really care about is how many dollars you bring  
35 in. And so, if we could foster this research through some funding  
36 competitions, and also the more people we can get involved in these  
37 competitions, the higher quality the research is going to be. And  
38 workshops like this may be targeted on this issue.

39 We do need some more work on the distributions (as I  
40 mentioned) adding crime types; more data on race, ethnic, and minorities;  
41 trend analyses, sub-national analyses, and I think I have belabored the  
42 issue of needing more explanatory research on the subject, and really  
43 good research, too. Good research that's using high-quality statistical  
44 analyses, using the data appropriately, so that Janet and I don't get all hot  
45 under the collar about people using the data wrong, and the issue of  
46 collecting additional data again.

47 I didn't talk about the methodological issues, because I didn't  
48 think this was the right place for that, but there's a lot of debate about the  
49 measurement of violence against women in the NCVS. The redesign was,  
50 in part, responding to that.

1 Mike and Cali Renesen have what I think is a super paper in  
2 2005 in Journal of Quantitative Criminology that compares estimates  
3 from the—the issue has been that the estimates from the NCVS are lower  
4 than from other surveys, like the National Violence Against Women  
5 Survey—and they do a great job of comparing and showing where there  
6 are some methodological differences, and in the end they conclude that  
7 what is important are the screening, the cues that people are given for  
8 reporting the crimes, and the treatment of serious victimizations.

9 I won't go through all that, but the other methodological issues,  
10 I think Lynn also spoke to. A report that the National Academy of  
11 Sciences Committee wrote speaks to the idea that we can try and think  
12 about some alternative sampling strategies, and oversampling some  
13 subgroups to get some more information that we might need, and trying  
14 to figure out how to do some sub-national research.

15 Thank you.

16 ()

17  
18 **Mr. Rand:** Thank you, Karen. Our first discussant is Mary Lou Leary.

19 **Discussants**

20 **Ms. Leary:** Thanks, Mike. I want to thank BJS for inviting me here  
21 today. I kind of feel like all the smart kids are sitting out there, and I'm  
22 just a practitioner and an advocate, so I'm really pleased to be here, and I  
23 thought the papers were really interesting, and quite understandable. So  
24 that was very nice.

25 And I appreciate BJS calling us all together. I think it's fabulous  
26 to bring this kind of a group together where you have, not only  
27 statisticians and researchers, but we have policymakers, we have  
28 practitioners here in the room, and that, to me, speaks volumes about how  
29 sincere, and really how aggressive BJS is going to be about making the  
30 NCVS useful to all of us, and honestly trying to serve the users.

31 I spent 20 years in law enforcement, and many of those years I  
32 was the Assistant DA, and then an Assistant U.S. Attorney in D.C., and I  
33 spent many of those years working with police, and complaining about  
34 how NCVS was too old, too slow, wouldn't tell us what was happening  
35 here on the ground in D.C.

36 There's the old expression of where you stand depends on where  
37 you sit, so now I sit as a victim's advocate at the National Center for  
38 Victims of Crime, and I have a completely different perspective on  
39 NCVS, particularly because it is, in my view, the only tool we have to  
40 really understand the extent of victimization, and the context of it, and  
41 the repercussions, both for victims, and for society.

42 I can't tell you how much we at the National Center for Victims  
43 of Crime depend on it and use it every single day. So I want to thank you  
44 for that, as well.

45 My real interest in NCVS really is how we can better use it to  
46 prevent victimization, and to help victims of crime rebuild their lives

1 after they have been victimized.

2 Brian Forst gave us some kind of shocking statistics this  
3 morning, and I appreciated the way he wove victimization into his  
4 presentation, but he told us that only 50 percent of the felonies are  
5 reported. You cut that in half when it comes to all crimes, not just  
6 felonies. In my view, this is one of the critical questions that we could  
7 and should be answering with NCVS, and the question is, why aren't  
8 those crimes reported? What's going on?

9 If you believe that effective investigation and prosecution and  
10 punishment will ultimately benefit victims and society as a whole, why  
11 don't we have a handle on this question?

12 NCVS, I think, could be a very powerful tool. They are already  
13 working towards that. We ask if the crime was reported. But we really  
14 are not making an effective effort to get a more nuanced understanding  
15 of, why not. Why isn't it reported? Is it fear? Is it prior bad experiences  
16 with the police? Is it self-blame? Is it, well, I was drinking, I was doing  
17 drugs, I was doing whatever, and so it's really kind of my fault?

18 I think it's critically important to find out why victims are not  
19 reporting these crimes, and I think that will also help law enforcement. If  
20 you want to increase the trust between law enforcement and the  
21 community, you better find out why they're not talking to you. Critical  
22 information.

23 You know, the answers to these questions can help us craft  
24 policies and services for victims that will help them rebuild their lives  
25 after crime.

26 In addition, it gives us an opportunity to explore the differences  
27 between informal help-seeking that victims engage in and the more  
28 formal help-seeking, which would be you report the crime, get a victim  
29 advocate from the prosecutor's office or police department or whatever.  
30 But the kinds of informal help-seeking mechanisms that victims use to  
31 rebuild their lives matter. We could ask questions through NCVS about  
32 what victims are doing: What kind of services are they reaching out for?  
33 What kind of help do they want and need? Then we can also bolster that  
34 informal help-seeking network, which is always going to be there and  
35 which, frankly, is really the support system on which most victims rely.  
36 That, of course, doesn't account for all the victims who get no help at all.  
37 But we can support that informal help, and we can use our findings to  
38 build it, and strengthen it.

39 The other thing is, there's an opportunity, (I think it was pointed  
40 out in the two papers) to get a more nuanced understanding of the actual  
41 impact of victimization.

42 We ask a number of questions about the experience of  
43 victimization. But one of the areas that we neglect is what I think of, in  
44 my non-researcher/non-statistician way, as the functional impact of  
45 victimization.

46 What impact does victimization have on things like marital  
47 status, work status, social relationships, and missed opportunities due to  
48 crime? You maybe could use some of those qualifications—indicators of  
49 quality of life might help craft those kinds of questions.

1 But then there's also an opportunity to look at the flip side here,  
2 and something that we at the National Center think is really important.  
3 We can look at the resiliency of victims.

4 This kind of gives us a framework to look at, believe it or not,  
5 positive changes that occur over people's life after victimization. Victims  
6 primarily are relying on themselves over a long-term process of recovery.  
7 That takes a bedrock of resilience that we could be exploring, learning  
8 more about, and again, crafting policies to strengthen and support.

9 I want to talk a little bit about NCVS and the search for  
10 predictors of victimization, which was addressed in both of the papers.

11 What do we want to know when we ask a victim, "why were  
12 you victimized?" We're looking at race, we're looking at socioeconomic  
13 factors, and all of that. We're trying to figure out how we could predict  
14 the next victim.

15 I remember one time when I was an AUSA, and I was on a ride-  
16 along with one of the D.C. cops. We're up on Capitol Hill, and this  
17 woman comes along in a fur coat, carrying a big purse and about 15  
18 packages, bags, shopping bags and so on in her arms. We're sitting there  
19 and the cop says, "Now you watch. That's the ultimate predictor of  
20 crime. That woman is a victim waiting to happen." Sure enough, two  
21 seconds later, some guy comes along, and just snatches it all away from  
22 her, pushes her down, and someone grabs her purse, and then he's gone.  
23 But it's not quite that simple when it comes to the NCVS.

24 I appreciate the need to predict victimization, but I must say the  
25 idea—I don't think that the idea of asking somebody, "why were you  
26 victimized?" will help us answer that question.

27 You have to understand that, on the National Crime Victim Help  
28 Line that we run at the National Crime Victim Center where victims of  
29 all types of crimes all over the country call us—24,000 calls a year—one  
30 of the most poignant and ever-present discussions that we have with  
31 victims who call has to do with self-blame.

32 If you ask—nobody gets up in the morning expecting to be  
33 victimized. There isn't a rational explanation for it in most cases. We  
34 can't really ask victims to step back, be objective, be rational, and  
35 explain why. I was walking my dog and I got raped. I was at a party and I  
36 had a few too many drinks, and I was mugged, whatever.

37 I really fear that victims who are so quick to blame themselves  
38 in the first place could really be revictimized by a question like that.

39 There are a lot of smart people in this room, so let's think about  
40 other ways to get that information. Maybe we can ask—and I'm quite  
41 serious—ask perpetrators how they chose their victims and why. NCVS  
42 is probably not the way to do that, but there are other ways to get at that  
43 question, and I feel really strongly about that.

44 A couple of quick points that I want to make with respect to the  
45 violence against women paper, which I really thought was excellent.

46 The National Center for Victims of Crime has a stalking  
47 resource center, and it's our view that stalking is one of the emerging

1 crimes of our day. We're kind of where we were with domestic violence  
2 20 years ago in terms of awareness and understanding of how to deal  
3 with victims, understanding how to investigate, and so on.

4 I couldn't agree with you more that we need much more  
5 information about stalking: What is it? How does it impact your life?  
6 How is technology being used? Because it's no longer the guy jumping  
7 out from behind the bushes with his trench coat on, it's the person at his  
8 computer using spyware, it's the GPS, it's all the forms of technology  
9 and, as usual, the perps are way, way ahead of law enforcement when it  
10 comes to using technology to perpetrate crimes.

11 So I hope that we do get more information about that, and about  
12 victimization by perpetrators other than intimate partners. It is a good  
13 opportunity for BJS, actually, to call attention to the fact that women are  
14 more often victimized by others.

15 There's still a lingering public perception that women get into  
16 these bad relationships or they're provoking their intimate partner, and  
17 that's why they get victimized. I think that's so important.

18 Alcohol use is a major, major issue, and I applaud your  
19 reference to that in the paper. Its use could be by the perpetrator or by the  
20 victim. Dean Kilpatrick has done some very interesting work on how the  
21 use of alcohol fits in, for instance, in forcible or incapacitated rape. Over  
22 70 percent of those cases involve alcohol only, and then there are others  
23 that involve drug-facilitated rape and so on, but alcohol is a huge factor.

24 And now that my son is a freshman in college, I really want to  
25 know more about alcohol and crime. It's a really critical point.

26 And finally, again, I want to thank Dean Kilpatrick for some of  
27 the work he's done. I noticed there was a reference to the kinds of  
28 screening questions we use when talking to victims about sexual assault,  
29 and I know that NCVS has done some work on this to try to elicit more  
30 information.

31 When we did a study at the National Center, (when Ann  
32 Seymour was there years ago) a study called Rape in America, our  
33 numbers were much higher than NCVS. And it's our belief that it's  
34 because of the kinds of screening questions we asked.

35 Even if you work for the U.S. Bureau of Census, you can ask  
36 straightforward, graphic kinds of questions, so that people will  
37 understand what it is you want to know. And if we want to base what we  
38 do on what we know then we've got to ask the right questions.

39 Thank you for those two wonderful papers, and for the  
40 opportunity to comment.

41  
42 **Mr. Rand:** The second discussant is Ms. Jackie Campbell.

43 **Ms. Campbell:** I also welcome the opportunity to say something about  
44 these papers and the work that BJS does in this area, the importance of  
45 what we've heard. A lot of what I've prepared to say has already been  
46 said. But I do want to reiterate a couple of things—and slightly

1 differently.

2 First of all, in terms of Lynn's paper, I really want to echo the  
3 importance of us using the NCVS, and improving the NCVS around the  
4 issue of elder abuse. If there's ever been a neglected form of  
5 victimization and violence, it's elder abuse. And, of course, elder abuse  
6 crosses over the intimate partner violence issues because some of the  
7 elder abuse is actually couples that have gotten older, and are continuing  
8 some of the intimate partner violence patterns. So it's important to  
9 consider that possibility. But all the forms of elder abuse are incredibly  
10 underreported, understudied, and it's really an area where we could do  
11 better.

12 Also, in terms of the issues for immigrants. My area of research  
13 is intimate partner violence, violence against women, so I'm particularly  
14 interested in the violence against immigrant women—the apparent  
15 increase in intimate partner violence amongst immigrant women, the  
16 apparent increase in intimate partner homicide for immigrant women.  
17 And one of the things that we have learned is that we are not going to get  
18 anywhere with “I'm from the government, and we want to check on you,  
19 we're doing a survey and, by the way, what's your citizenship?”

20 However, we can ask where people were born, and that's what  
21 we've found in our studies. If you ask the state and country where people  
22 were born, you at least get foreign-born. You don't have any information  
23 on actual citizenship, but we're not sure that has anything to do with the  
24 increase in victimization, that it's more in terms of immigrant population.

25 Obviously, that necessitates us being able to conduct some of  
26 these surveys, at least in Spanish, and I think that is done. (I wanted to  
27 verify that.) Of course, when you conduct a survey in Spanish, another  
28 thing we've learned—through painful sessions with people that speak  
29 Spanish from different countries and from different origins—that  
30 especially when you're asking about sensitive information, like sexual  
31 assault, and forced sex, for instance, you have to figure out some  
32 language in Spanish that will translate and will be conceptually  
33 equivalent in Mexican dialects, and Central American dialects, and  
34 Puerto Rican dialects. You have to really work on the conceptual  
35 equivalents as well as the word equivalents. Translation, back translation  
36 is not enough when you're thinking about some of these very sensitive  
37 acts.

38 It's also important to think about, not only the screening  
39 questions, and I agree with what's been said in terms of the issues,  
40 especially for things like intimate partner violence, in terms of how you  
41 ask the screening questions, but it's also important how you frame the  
42 whole survey. One of the things that we have found, for instance, is that  
43 you get a much higher prevalence of intimate partner violence when you  
44 say that this is a study about women's health and relationships.

45 Now that doesn't mean that that's the way we ought to introduce  
46 the NCVS. But we need to think about what that means—especially for  
47 prevalence of intimate partner violence—when you're thinking in terms  
48 of even using the words “violent victimization.” At least we got away  
49 from the just crime notions in the original thing, and that helps. But one  
50 of the things, for instance, that the data from the NCVS suggests is that  
51 marriage is a protective factor for intimate partner violence.

1 I've got a lot of things to say about that. But first of all, one of  
2 the things to think about is that, when you have left or divorced this man  
3 because he was violent towards you, after you've done that, you're much  
4 more likely to define what happened to you as violence. And you're  
5 much more likely to put him in the category of a perpetrator of violence  
6 than when you're still with him or still married to him, because when  
7 you're still with him or still married to him, you're trying to think about  
8 it in terms of conflict, in terms of those kinds of things.

9 For instance, the original National Family Violence Survey used  
10 the Conflict Tactic Scale that Murray Strauss and Richard Gellis  
11 developed. The way they open up that survey is that it's about marriage  
12 and relationships between men and women. And the way they frame the  
13 questions about violence is, "all couples have disagreements. When you  
14 and your spouse disagree ..." Then they ask, "how many times in the past  
15 year did you argue and discuss the issue calmly?" First of all, it's discuss  
16 the issue calmly. Then, "how many times did you argue and call each  
17 other names?"

18 It gradually gets into violence. And that's one of the highest  
19 prevalence studies that we've had in terms of intimate partner violence.  
20 Why is that? It may be because it was done a long time ago, and  
21 hopefully, things have gotten better. But it also may be the way the whole  
22 survey was framed, and so that's one of the things to think about when  
23 we look at the prevalence and incidence that we find from the National  
24 Crime Victimization Survey—that, yes, it's going to be lower in terms of  
25 intimate partner violence than we find in other surveys. And, yes, we're  
26 going to have an even higher increase amongst ex-partners—divorced  
27 and separated women—and that that increase is going to be even higher  
28 because of the way they're thinking about what happened to them. You  
29 know, 6 months ago when they were with him: Yes, he was a serious  
30 perpetrator.

31 So it's also in the terms of the way we frame the entire survey.  
32 The National Crime Victimization Survey, I think, is terrific for looking  
33 at trends over time and for disaggregating, but I always think to myself,  
34 that the people that say "yes" to intimate partner violence questions in the  
35 National Crime Victimization Survey are the people whose situation is  
36 really pretty bad and/or they have left the relationship.

37 Now again, around the implications for policy, the notion that  
38 marriage is a protective factor for domestic violence. We have to be  
39 really careful that we don't then say, "well, the cure for domestic  
40 violence is get everybody married," because for couples that are already  
41 violent, marriage is not going to fix their violence.

42 But there are some—the policy things that have been taken  
43 away from data from the National Crime Victimization Survey to say,  
44 "yes, see, we need to get everybody married, and that'll cure the  
45 domestic violence problem."

46 So, we have to be really careful about how this kind of data is  
47 used, in terms of policy recommendations. (Not that Michael ever would  
48 say that in any of his policy implications, but some people have.) I think  
49 we have to be really careful when we explain some of these results, that  
50 we do it in ways that policymakers don't leap to wrong conclusions,  
51 especially around that one.

1 I also agree about the need for a lot more disaggregation in race  
2 and ethnicity. Some of the data that comes out of the National Crime  
3 Victimization Survey is somewhat difficult to interpret, somewhat  
4 different from other incidence prevalence studies around intimate partner  
5 violence.

6 I was looking at the results that just came out from the  
7 Behavioral Risk Factor Surveillance System around intimate partner  
8 violence. They show some really different findings, both in terms of a  
9 much higher prevalence than the National Crime Victimization Survey  
10 shows, and also some differences around the apparent increases among  
11 some of the minority ethnic groups.

12 However, no matter which survey you look at, those  
13 differences—especially between African American and white—always  
14 become much less (or in some places disappear) when we do control for  
15 some of the structural factors, such as income. Household composition is  
16 also an interesting one to control for.

17 However, the increased prevalence amongst Native American  
18 couples continues, no matter what we do in terms of controlling for some  
19 of those other factors. And oftentimes that group is left out of our  
20 analysis. In the National Crime Victimization Survey, we tend to  
21 concentrate analysis on blacks, whites, and Hispanics because we have  
22 sufficient numbers. and I think it's really important that we start to look  
23 at what's happening amongst Native American communities, and include  
24 them in our analyses.

25 I just want to say two other things quickly. The notion of  
26 funding competitions is really important. That would be enormously  
27 helpful in terms of generating, stimulating some of the kinds of complex  
28 analysis that we need. It would also be really helpful for some of the  
29 students that are trying to do dissertation work using these big databases,  
30 if at least a little bit of funding could be offered for that. And I know that  
31 there are ways to get it through NIJ, but oftentimes, that's really  
32 competitive. So part of that funding might be set aside for dissertation  
33 research.

34 One last thing about the help-seeking. One of the things that the  
35 National Crime Victimization Survey shows is that African American  
36 women are more likely to call the police than white women for intimate  
37 partner violence. That goes against all of the research that's been done,  
38 particularly with African American women. They talk about their  
39 reluctance to call the police, and so forth.

40 I've always found that very interesting. Some of the things that  
41 Mary Lou has said resonate in terms of disentangling not only the things  
42 on the risk factor side (the structural risk factors) and race and ethnicity,  
43 but also working to disentangle some of the help-seeking kinds of  
44 findings—working with African American and ethnic minority women to  
45 learn how we can have calling the police be a helpful response. And also  
46 working with our police units in terms of their response to domestic  
47 violence around some of those issues.

48 I think some of the issues are also true for foreign-born  
49 women—in terms of reluctance to call the police and what that may end  
50 up with.

1 I think part of what can be looked at there is state-level data  
2 about responses. Because in some states, if you call the police, one thing  
3 that may happen is an automatic call to child protective services around  
4 issues for the children. So women are afraid that if they call the police for  
5 the domestic violence, that their kids will get taken away from them.

6 So, looking at some of those state law, and state-specific  
7 responses related to some of those findings around help-seeking might be  
8 another way to really use this data to inform policy.

9 Thanks.

## 10 Open Discussion

11 **Mr. Rand:** I'd like to thank you all for some really valuable insights in  
12 how we can move the research forward, and move our program forward.

13 I'd like to open it up for comments, questions, and suggestions  
14 from the floor. While most of what we've been talking about has  
15 pertained to the Victimization Survey, I think some of the issues and  
16 questions really are larger than that—pertaining to victimization in  
17 general—and maybe speak to other programs, other ways of getting at  
18 the data.

19 So, I really would love to get some input on that, as well—not  
20 necessarily restricting it just to how we can improve the survey to  
21 measure the kind of things that we've been discussing, but how we can  
22 get at some of the answers in other ways, as well—ways that maybe  
23 don't pertain to or don't involve the survey.

24 Mr. Lynch: They said I get two shots at the microphone. This is the last  
25 one. I've been looking at the NCVS forever, it seems. And I really see an  
26 instance of domestic violence. The link between the NCVS and the  
27 victim's movement is probably one of the worst marriages I've ever seen.  
28 It seems very polite in this discussion, but if you look at it, I don't think  
29 that I recall any single supplement, and this could be to the NCVS, by the  
30 victims.

31 There's been a real pronounced preference to go around the  
32 NCVS and so I guess I have two questions. One is, is that perception  
33 correct (because it could be right or wrong)?

34 **Mr. Rand:** Recently, it's incorrect. You've been working with us.

35 **Mr. Lynch:** I'm talking about over a long span of time, and also, one: is  
36 it correct? And the second thing is: if it is correct, what kind of  
37 institutional changes could you see for that marriage to get better?

38 I think a few things were mentioned here, prevalence estimates.  
39 There are a lot of technical issues that may be insurmountable. Mary  
40 Lou used the nice term "nuanced" and so there's only so much nuance  
41 you're going to build into a household survey.

42 So, I'd like to get your feelings on both of those issues, about  
43 whether the perception is correct in spite of what Mike said and the other  
44 thing is, if it is correct, what kind of institutional arrangements could be  
45 put in place to make it a better marriage?

1 **Ms. Leary:** Well, I can't speak to the historical aspect of that. (I assume  
2 you're talking about the Office on Victims of Crime working with BJS  
3 on the supplement.)

4 I haven't seen that happen in the years that I have been looking  
5 at it, and I think it could be enormously helpful. But in my view, I think  
6 that's an issue for OJP overall.

7 There should be a lot more collaboration amongst the bureaus  
8 and the Office on Violence Against Women and the Office on Victims of  
9 Crime ought to be sitting down—and probably BJA—too, with BJS the  
10 same way that we are all sitting here now. How can this be more useful?  
11 That should be happening internally within DOJ, as well.

12 It's just critical. There's such a wealth of information there. So,  
13 I wholeheartedly support that and would encourage inclusion of all. I'm  
14 thrilled to be included here today as a representative of the victims  
15 community and there are other folks that I have worked with on victim  
16 issues here in the room that could provide great insight for that.

17 So, the institutional changes? I think you would start with a  
18 collaborative spirit at the department and build in structural  
19 opportunities. (I see Barry is chuckling back there.) Structural  
20 opportunities for the bureaus to work together and we need an AAG with  
21 the moral or statutory authority to make that happen.

22 **Mr. Rand:** In 2006, the Office on Violence Against Women funded a  
23 stalking supplement to the NCVS. And in the field right now is an  
24 identity theft supplement that is being funded by a number of different  
25 agencies, many of them in OJP, NIJ, BJA, and OVC, as well as the  
26 Federal Trade Commission. So I think that we are getting some  
27 improvements in those areas.

28 **Ms. Pierce:** Hi. I'm Catherine Pierce with the Office on Violence  
29 Against Women, and I do want to thank BJS because we have had, I  
30 think, a good working relationship over the years and continue to enjoy  
31 that.

32 But I also want to thank Lynn and Karen for their papers. In  
33 particular, Lynn, you specifically mentioned partnerships with data users.  
34 I think one of the things that we'd like to be able to use this data for is to  
35 help us drive our grant programs more effectively and more efficiently—  
36 to look at the data, to have an opportunity to work with staff at BJS more  
37 closely, to analyze it, to give us some ideas about what directions we're  
38 headed in. So thank you for that suggestion.

39 I have a number of things I'd just like to respond to because I  
40 really felt so many important ideas were raised.

41 I want to reiterate what Mary Lou said about not asking victims  
42 why they were victimized—especially when it comes to rape, domestic  
43 violence, any kind of crime of violence against women. I would really  
44 like us not to go there for the reasons I think that Mary Lou described  
45 really well; but I think that asking them about what the repercussions  
46 have been is actually a very interesting and important question that we  
47 could really learn a lot from.

48 I also think that we need to tie that to the other comment that

1 Mary Lou made about looking at resiliency and, what can we learn from  
2 the experience of survivors and, how do we tie those questions about how  
3 their lives and the quality of their lives have changed to what we know  
4 about how they have healed and come out of it. So, I thought that was  
5 really excellent.

6 I don't want to hog the mike. I just have so many thoughts, but I  
7 guess my other major comment would be, I agree with Karen entirely  
8 that we need to foster more research. We need to bring more young, new  
9 academics into this field. We need to make this work attractive for them.  
10 We need to engage them as practitioners and as policymakers, and I think  
11 we have a responsibility there that we can act on more.

12 But I also want to underscore the importance of always  
13 engaging the advocacy community when identifying research priorities  
14 and when looking at the kinds of questions that we want to add or  
15 subtract from the NCVS.

16 I think that there are emerging issues in the field and the  
17 advocacy community has their hands on that pulse. I think that we always  
18 need to remember to engage them.

19 **Ms. Addington:** Since I am getting ripped here – (just kidding). I want to  
20 say something about the small amount of victimization research and  
21 making it a more attractive area. When I first was a graduate student—  
22 which wasn't that long ago—and I said that I was going to characterize  
23 my area of research as victimization research, I was told not to do that  
24 because: nobody studies that area, that's not a strong area to study, that's  
25 not a good way of characterizing your work, and don't do it. I guess in  
26 my paper early on, I noted the small amount of research attention,  
27 especially in our most respected journals in criminology given to  
28 victimization research.

29 So, I would echo that as a really important area to improve the  
30 visibility of victimization research and to encourage more people to get  
31 in this area because certainly there's plenty of work to be done for many  
32 more researchers.

33 But with regard to asking the victim or the respondent why they  
34 were victimized, I'm not envisioning questions like: "what were you  
35 wearing?" "were you asking for it?" I'd hope we could find more  
36 appropriate questions to ask. And the reason I suggested it is because, in  
37 my own work, looking at the NCVS summaries—their own summaries—  
38 many respondents volunteer this information. It provides a context and  
39 it's a much different context of stranger victimization versus somebody  
40 that they know versus assisting another person.

41 I think it's just a missing context that's provided and I do  
42 appreciate the fact that there might be certain victims we don't want to  
43 ask it to. Maybe this is a skip pattern kind of question.

44 If there are particular characteristics about the victimization,  
45 maybe, then we don't ask. But that certainly is something that should be  
46 explored—the appropriateness of asking these questions, whether to a  
47 particular group of victims or by type of incident. And don't forget that  
48 we ask victims these questions already in the NCVS with regard to the  
49 developmental disability questions and the hate crime questions. And,  
50 with the hate crime questions, we furthermore ask them, "what's the

1 evidence?” It’s almost as if we don’t believe them.

2 So, we do ask sensitive questions in certain contexts. And I  
3 think it’s important to consider why a person was victimized. I think it’s  
4 important to provide that context and provide an appropriate way of  
5 asking those questions and getting that information.

6 **Mr. Forst:** I’m wearing a tie with triangles on it and my question is  
7 about triangulation—specifically, with regard to fraud, cybercrime, and  
8 identity theft, which are hugely emerging crimes that we’re dealing with  
9 today. I’m reminded also of something Donald Rumsfeld said that made  
10 sense: Things about things that we know, things that we don’t know, and  
11 things that we know we don’t know and things that we don’t know that  
12 we don’t know.

13 In the area of fraud, for example, we’re often defrauded, don’t  
14 know about it, but we find out about it through other sources. We catch  
15 somebody who’s doing fraud and find out all of the frauds that, usually,  
16 he or she has done and so we can triangulate in that way.

17 My question is: what is being done at BJS to learn more about  
18 these serious emerging crime areas, and is anything being done to  
19 triangulate, so that we can find out about things that we don’t know from  
20 the Victimization Survey?

21 **Mr. Rand:** I can only speak to the identity theft portion of that and what  
22 we’re working on it now. We added some questions on identity theft to  
23 the core survey in 2004. It’s a very short battery of questions and,  
24 basically, it asks people if they discovered that they were a victim within  
25 the past 6 months as opposed to actually experiencing it in the past 6  
26 months. So, the theft could have occurred prior to that but they  
27 discovered it within that time frame.

28 We’ve taken that and translated that into a supplement where we  
29 actually ask about a 1 year period and that’s in the field right now. So,  
30 we’re learning about how people learn about their being victimized, and  
31 we ask them if they know how long prior to their discovery they were  
32 victimized.

33 So, we’re trying to get some of that information as it pertains to  
34 identity theft. We really haven’t taken that into the other fields of  
35 cybercrime or fraud. We have a business survey actually on cyber crime  
36 and I can’t really speak to that. That’s not my baby. I’ll have to talk to  
37 Mona Rantala on our staff to learn about that. I don’t think we’ve gotten  
38 into fraud in general, but certainly these are areas that we need to look  
39 into.

40 **Ms. Cole:** I’m Christine Cole, and I’m the Executive Director of the  
41 Criminal Justice Program at the Harvard Kennedy School.

42 I’m interested in the question of why people report and don’t  
43 report and particularly as it relates to the issue you raised. I’m hearing  
44 more and more from police executives that elderly people often are  
45 victimized with credit card fraud. So, they’re giving their information to  
46 somebody who then gets money out of their accounts and then they’re  
47 notified by the bank or the corporation and are explicitly told, you don’t  
48 need to report this to the police.

1           So, because we draw inferences on trust and relationships from  
2 the numbers of crimes that are reported to the police, and because we  
3 draw inferences on the relationships and the lack of trust in police with  
4 the failure to report, and we have a whole population with this particular  
5 kind of crime being explicitly instructed not to report, it seems to me that  
6 following up on that question is important.

7       **Mr. Rand:** We do have questions on the survey asking people who  
8 reported why they reported and people who didn't why they didn't  
9 report, although I think it was Karen's suggestion that we needed a more  
10 nuanced explanation. I think it was a good one because we get some  
11 basic information, but we probably aren't digging deep enough into  
12 getting at the underlying reasons for reporting or not reporting.

13           So, I think we need to be more nuanced and more complete and  
14 not just have the two questions. We have what is the most important  
15 reason, but still they're very broad categories and they're forced.

16       **Ms. Addington:** So, you get things like "other" for a schoolchild and  
17 other's the principal who can actually do something about it. Somebody  
18 else, but it doesn't say who. So, it's not the parent or that. So, you know,  
19 the "nuancing."

20       **Mr. Rand:** It's an important question.

21       **Ms. English:** Hi. I'm Kim English, Research Director of the Colorado  
22 Division of Criminal Justice, and I just wanted to say that I love the  
23 NCVS and I really appreciated your papers and appreciated your  
24 comments.

25           I just think it's important to separate out what kinds of research  
26 questions can be answered with something akin to the NCVS, even with  
27 modifications, versus another type of investigation that wouldn't look  
28 like the NCVS, because it's a different research study.

29           As BJS moves forward, I just think it's important to take that  
30 into consideration—and I think you've been incredibly gracious in  
31 accepting the feedback—I think lots of times the NCVS and any kind of  
32 large-scale data collection activity like that can't dig deep enough to  
33 answer some of these questions.

34           I appreciated, Lynn, your clarification about asking about the  
35 victimization piece and I remember reading that you said that lots of  
36 times people volunteer that, but that data is not actually available for  
37 analysis all the time, is that right, or is it?

38       **Ms. Addington:** Very rarely, if at all.

39       **Mr. Rand:** We actually have more capability to do that now. The  
40 limitation in past years was that the questionnaire was paper and pencil  
41 and so the narratives were hand written and they were never transcribed  
42 or computerized. We now have a computerized survey. So now we do  
43 have them on a file.

44           The problem now is that they may contain personally  
45 identifying information. So, before we can make that kind of file  
46 available and actually link it to the data file, Census has to go through  
47 and read every single case and delete personally identifying information.

1 We could just make it available as narratives, but to be useful, it's got to  
2 be linked to the data.

3 **Ms. English:** Yes, a major task.

4 **Mr. Rand:** I think that that's certainly something that I would have liked  
5 to have done years and years ago, if we didn't have the expense—if it  
6 was feasible. But it certainly is one of the things that we should be  
7 looking into and will be looking into—how do we facilitate that, because  
8 it is a valuable. I've used it myself and so I know how valuable it is.

9 **Ms. English:** Well, I think sometimes the data collectors on-site can  
10 translate some information into a box. That's what we do when we're  
11 doing data collection. Or you can tell them to exclude the identifying  
12 information.

13 **Mr. Rand:** Some of the information in the narratives can't be. I mean,  
14 you want it because it's not put into the box. You really want the  
15 narrative because it's really a lot more rich than it could be if you put it  
16 in a box. So, there is a value to that.

17 **Ms. English:** Yes, because I go back to agree with Mary Lou and  
18 Catherine about not wanting to ask victims directly, even though I know  
19 that you were assuming (and I would make the same assumption) that  
20 BJS and the Census Bureau would not do that in an intrusive way.

21 I do know, though, from our own experience that we can get that  
22 [contextual] data pretty easily from the offender, if we ask them. So that  
23 may be something for another survey when you're surveying offenders in  
24 prison or something or a more targeted study, to ask about the  
25 victimization and why they might have been the object of a crime.

26 Two more things. I would love to have state-level data. I know  
27 that everybody probably feels that way and it is a huge disadvantage. I  
28 use this data all the time. It's just a huge disadvantage and I'm from  
29 Colorado. So, I'll never be in one of the top-most populated areas.

30 And finally, I know that BJS has thought this through for years  
31 and years, but I still think that a qualifier on every publication regarding  
32 the NCVS would still be helpful, which would just say it doesn't capture  
33 crimes against children. I know that there could be lots and lots of other  
34 qualifiers, but as we see bullying getting more attention and schools  
35 probably being a much more scary place than they were when I went to  
36 school, I still think a qualifier that specifically says that would be really  
37 helpful to readers, so that they don't draw those policy conclusions so off  
38 the cuff.

39 **Ms. Addington:** Just to follow up on what Kim said—the initial thing  
40 about different types of data collection sources for different purposes—  
41 NCVS can't do everything. And I'll put a plug in here for something that  
42 Jim Lynch and I have mentioned and Rick Rosenfeld has mentioned—  
43 about really doing a purposeful national crime data collection system that  
44 includes police data, UCR type of data, NBRIS, which is part of the UCR  
45 collection, the NCVS, and looking at other vehicles to collect  
46 information about people in jails.

47 Maybe there's something better to do (with children, for  
48 example) that might not be appropriate for a household survey but

1 another type of survey. How can we get at the crime data issue? Not  
2 every data instrument should have to do everything itself, but what can it  
3 do best? So, I think that that point is very well taken.

4 **Ms. D'Addacio-Fobian:** Hi. I'm Jasmine from the Office for Victims of  
5 Crime. I have sort of a status track question and it's also about specific  
6 population.

7 I know you have questions that you've added to the NCVS  
8 about victims with disabilities, and we were just wondering when that  
9 kind of data might be available.

10 As Mary Lou knows, there's going to be a large conference on  
11 victims with disabilities in the next 18 months through an OVC project  
12 and it would be really great to sort of be able to share that data with the  
13 field and then get feedback from the field about how useful it is, what  
14 else is needed, and that kind of thing.

15 **Mr. Rand:** Thank you. We added those questions some time ago, but it's  
16 taken us a long time to develop them because we didn't get any funding  
17 to actually add the questions.

18 We revised the questions in 2007. We didn't have enough money  
19 to put the questions on both the screener and the incident report. So, we  
20 chose to put it on the incident report and get the information about the  
21 population information from another source.

22 At the time we originally did this, we didn't have any set of  
23 identical questions that we could do this with. American Community  
24 Survey has a set of questions that we're now using to get the population  
25 estimates, and we have an identical set of questions on NCVS that  
26 identify people with disabilities.

27 Those were implemented in 2007. So, we're awaiting those data  
28 from the Census Bureau. We'll be doing the analysis this year and we  
29 hope to get a report out this year. It's on our publication schedule for  
30 2008.

31 **Mr. Stevenson:** Philip Stevenson. I'm Director of the Arizona Statistical  
32 Analysis Center, Arizona Criminal Justice Commission in Phoenix.

33 Two questions about some areas the NCVS might be able to  
34 add. I just want to ask the panel's opinion of whether or not NCVS is the  
35 appropriate instrument, or if this is even possible. One is related to your  
36 section, Lynn, on vicarious victims.

37 There's an opportunity to collect some information about  
38 homicide, homicide incidents, the context of homicide, obviously not  
39 specifically from the victim but from those who have certainly been  
40 impacted and have some information about the incident and the context  
41 in which it happened.

42 The second area is, it seems to me that we're asking questions  
43 about satisfaction with police and victim's experience with police, and do  
44 you think it's a missed opportunity for us to learn more about victim's  
45 experiences with other components of the criminal justice system?  
46 Digging a little bit deeper, prosecution, the courts, the judges, specific  
47 roles in the criminal justice system process?

1 **Ms. Leary:** I would say that I think those are incredible opportunities for  
2 NCVS and important areas for us to learn about.

3 From a perspective of working in an organization that tries to  
4 help victims rebuild their lives after crime, the point you raised, for  
5 instance, about various intersections along the road in the criminal justice  
6 system, where the victims interact and with whom, every single one of  
7 those points of interaction has a potential to have tremendously positive  
8 or tremendously negative impact on the victim's ability to recover from  
9 crime.

10 I was on a panel at John Jay College a couple weeks ago and  
11 one of the panelists is a woman who's a sexual assault nurse examiner.  
12 She's also a survivor of rape and she told us her own personal story about  
13 the rape and she lived right near the hospital where she works. That, in  
14 and of itself was traumatic, going to the hospital, but a neighbor came to  
15 help her. Somebody else took her to the hospital. All the people she  
16 worked with met her at the hospital, and everybody made her feel worse  
17 all the way up to the point in time where she met the detective who came  
18 in and said, "I am so sorry this happened to you." She was so articulate in  
19 saying, "that was the point at which my recovery began."

20 It's powerful. You just can't imagine what an impact those  
21 intersections have—to go to the prosecutor's office, the way that you're  
22 treated, whether you're believed, whether people are kind of looking  
23 askance at you—has a huge impact for all victims. It's not just rape  
24 victims, it's all victims of crime.

25 So, I think we could learn so much, and we could improve our  
26 practices in the criminal justice system.

27 **Mr. Rand:** I think these are important issues and they speak to the  
28 different pulls that you get for trying to get different kinds of  
29 information. And each has implications for the structure of the survey,  
30 whether it's the NCVS or whatever data collection survey.

31 For example, with homicide victims, you would probably need  
32 something other than a probability sample to get at that because, even if  
33 you look at people impacted by homicide, the numbers are too small  
34 (thank goodness) to really be able to develop a survey using a probability  
35 sample like the NCVS.

36 I think data about satisfaction with other components of the  
37 criminal justice system are really valuable, but that would speak to a  
38 different kind of structure in terms of looking longitudinally—following  
39 a victim.

40 The NCVS now uses a 6-month window. CN STAT asked us to  
41 look at maybe expanding that to a 12-month window—looking at crimes  
42 that occurred in the previous 12 months. But even that may not be  
43 enough time to follow somebody through a case that may be 2 or 3 or  
44 even more years in the making from start to finish as it progresses  
45 through the criminal justice system.

46 So, each of these are important questions and we'll speak to  
47 what the survey might look like in the future as we begin to develop a  
48 comprehensive plan for how we want to structure it based on what we  
49 think the goals are and what the impact from the groups such as this are.

1 **Mr. Simon:** Good afternoon. My name is Tom Simon, and I work for the  
2 Centers for Disease Control and Prevention, the National Center for  
3 Injury Prevention and Control, and we're particularly interested in the  
4 public health burden associated with violence and injuries that result  
5 from violence.

6 The National Crime Victimization Survey is a very valuable tool  
7 in terms of documenting the prevalence of victimization and the injuries  
8 that follow, and I thought the panel did an excellent job today of  
9 highlighting several key ways that the tool can be improved, and one of  
10 those that resonated with me and that several panelists touched on was  
11 this issue of non-disclosure. That is, because of the way the NCVS is  
12 framed, because of the stigma associated with certain types of  
13 victimization, intimate partner violence, sexual violence, or because of  
14 fear of retaliation, victims may be reluctant to disclose, even within the  
15 semi-protective context of the NCVS.

16 I think the reality and the perception of this, as several panelists  
17 mentioned, is playing a role in the field's willingness to accept the NCVS  
18 data, and I was wondering if this is something that the panelists would be  
19 interested in elaborating on a little bit more in terms of suggestions for  
20 ways to improve the disclosure, but also then the acceptability of the  
21 NCVS data as it relates to issues of disclosure.

22 **Mr. Rand:** Panel? Well, from my perspective, I think it has been a  
23 concern because I think I've seen that—I believe that one of the reasons  
24 the NCVS has not been used is because some of the studies that have  
25 been done from other perspectives, the public health perspective,  
26 National Violence Against Women Surveys, have produced higher  
27 estimates and so I think the NCVS, for whatever reason, and I think that  
28 Jackie's comment is something that I've said for a long time, that women  
29 who are in a relationship and don't report are more likely to report once  
30 they leave the relationship.

31 It's not the safety of marriage, it's just a changing of perception  
32 and looking back at what's happened to them in the past from a different  
33 status and I don't think that you can get that from a crime survey. I don't  
34 think that you can ever get the kinds of estimates from a crime  
35 perspective that you may get from a public health or safety study or a  
36 study of family dynamics; and so that's going to be a concern.

37 I don't know how you improve the disclosure within the Crime  
38 Survey, other than trying to refine our methods within that context. I'm  
39 not sure that's an answer.

40 **Ms. Campbell:** Michael, I used to know this and I apologize, but when  
41 the phone is answered, what is the opening context?

42 **Mr. Rand:** It's a crime context. Hi, I'm so and so from the Bureau of  
43 Justice, Bureau of Census, and we're conducting a survey for the  
44 Department of Justice about crime.

45 **Ms. Campbell:** So, it frames it around crime?

46 **Mr. Rand:** Yes, it's framed around crime and the name of the survey is  
47 the National Crime Victimization Survey.

48 **Ms. Campbell:** I know, yes. I think that just starting there, people get the

1 mindset, “I’m going to be asked questions about crime.” There’s so much  
2 intimate partner violence that—whether they’re married or not—the  
3 people just aren’t thinking of it as a crime.

4 **Mr. Rand:** Well, if you think “crime,” you have to think that the person  
5 who did something to you was a criminal and then you have to begin  
6 thinking, “well, am I married or in a relationship?”

7 **Ms. Campbell:** Yes, right, exactly. So, I know the National Violence  
8 Against Women Survey opens up talking about violence against women.  
9 Maybe if it [NCVS] could start out framed around “victimization” versus  
10 using the word “crime” that wouldn’t affect the name of the survey.

11 **Mr. Rand:** The British have it now broken into pieces. They have a  
12 general crime survey and then they have a special violence against  
13 women survey that’s separate and has a different context, I believe, and a  
14 different methodology. It’s usually self-administered and so --

15 **Ms. Campbell:** Yes, but it’s given to the same households?

16 **Mr. Rand:** No.

17 **Ms. Campbell:** No.

18 **Mr. Rand:** It’s a separate proposal. They can’t reconcile the two  
19 estimates and I think they’re getting estimates at what, about five times  
20 as high? Is that what it is, Jim?

21 **Mr. Lynch:** I don’t know.

22 **Mr. Rand:** Well, anyway, they’re getting higher estimates of violence  
23 against women from the separate surveys.

24 **Ms. Campbell:** It’s almost like they should do some corrective thing—  
25 who’s going to fund this, I don’t know—but if you did the same  
26 households or a subset of the same households then you would have  
27 something to base a corrective factor on.

28 **Ms. Heimer:** Because the methodology—you raise the bounding issue,  
29 Jim—the methodology is a great methodology and I think, Bonnie, in  
30 your paper in that Criminal Justice 2000 Volume, you talk about the rigor  
31 and about using the first interview as kind of the starting point—not  
32 using the data. You use the first interview as an anchor and then when we  
33 look 6 months later, we know that event actually happened in those 6  
34 months and not eight months before.

35 That’s a huge issue when comparing these surveys because the  
36 National Violence Against Women Survey does not do that. In fact, a lot  
37 of the estimates that get reported places are erroneously reported, I think,  
38 because they don’t clarify that this is lifetime prevalence.

39 A lot of times, they’ll just be comparison of numbers. You’re  
40 not even talking about apples and oranges. So, the methodology’s great,  
41 if we could figure out how to --

42 **Ms. Heimer:** The issue is the screening and the pitch, not the  
43 methodology.

1 **Ms. Campbell:** That's right, yes.

2 **Ms. Heimer:** The other surveys have great screening and pitch, but the  
3 methodology's not as good.

4 **Ms. Campbell:** That's right. There's not as much repetition, is part of  
5 the issue.

6 **Ms. Addington:** I think Jack McDermott was talking about this earlier  
7 this morning. If we want more, what's more going to get us? Do we just  
8 want more? Taking it out of Violence Against Women, although I know  
9 there's a lot of contention about Violence Against Women and it's an  
10 important issue, but when they take these binary attributes—and an  
11 aggravated assault can be “with a sharp object” and I've seen cases  
12 where the sharp object was a pencil.

13 I'm sorry, Mike, but I teach undergrad, so I kind of get a little  
14 dramatic here. But I think the important question is, “are we getting the  
15 information that we want?” I think that is what Tom was talking about.  
16 We want to make sure we're capturing the serious victimization that  
17 people might have some hesitancy to report—even on a victimization  
18 survey—whether it's a sexual assault or rape or aggravated assault—  
19 because the offender's in the next room and is going to hear [the victim]  
20 on the phone answering these questions or something like that. It's about  
21 finding a way of just not capturing more information, but capturing the  
22 information that is important for policymaking.

23 **Mr. Simon:** A valid report.

24 **Ms. Addington:** Yes.

25 **Mr. Derene:** I'm Steve Derene with the National Association of VOCA  
26 Assistance Administrators, and our members are the ones that dole out  
27 state assistance grants among the 56 jurisdictions, and I appreciate this  
28 session.

29 I guess as a general observation, we heard this morning about  
30 how law enforcement needs the data now that they can use, and I guess  
31 we'd have a comparable challenge here.

32 A couple of years ago at a conference, we tried to develop a  
33 field-generated research agenda. What do state administrators both for  
34 assistance and crime victim compensation programs need? What would  
35 we like to see researched? What data would we like? What analysis  
36 would we like so we can do our jobs better?

37 Frankly, it was very disappointing. We got very little response,  
38 which sort of told me that the people who are actually on the front lines  
39 (with a few exceptions) don't know what's there, don't know how to use  
40 it, and don't even know what questions to ask.

41 I think, obviously, it's been mentioned before, I'll repeat it,  
42 state-level data, local-level data would be critical. About 20 years ago, I  
43 worked for OVC doing a report to Congress on VOCA when it started. I  
44 met with BJS and we couldn't use [the data].

45 I know the Center for Victims of Crime have looked at crime  
46 victim compensation and the disparity there. The data just isn't there to

1 even make basic comparisons.

2 So, my only message here is that this kind of conversation needs  
3 to go on. We need to educate the field as to what's there, so they know  
4 what questions to ask. It was almost embarrassing to see the dearth of  
5 response. And there are some notable exceptions, but I think the  
6 application of the data, the usefulness of the analysis would be really  
7 helpful to those of us who are involved in actually providing support for  
8 direct services.

9 So, I don't know if there's a comment or response to that, but I  
10 think that thinking in terms of how you apply this information to the  
11 actual implementation of services—and what the people in that process  
12 need to know—would be a real helpful conversation and probably  
13 mutually beneficial to help direct the data and help direct the analysis.

14 **Mr. Rand:** One of the areas for research that we are looking into right  
15 now is how to improve our ability to provide smaller-area data from the  
16 NCVS, either as it's configured now or as it might be configured in the  
17 future. So, we're hoping to make it more useful as far as that goes.

18 **Mr. Shaw:** Richard Shaw from the National Center for State Courts.  
19 Following up on earlier points about trying to connect the dots across  
20 these domains and the comment about roles: I think one of the things that  
21 courts would like to get a better understanding of—and I'm curious as to  
22 your thoughts on whether this instrument can carry this weight or at least  
23 provide an initial high-level look at this issue—is the use and/or efficacy  
24 of various programs that are integrated into the adjudication process to  
25 address victim issues.

26 For example, do victim impact statements seem to matter to  
27 victims? State courts also have, in appropriate circumstances, victim-  
28 offender reconciliation programs as part of the processes. These  
29 programs are typically started because somebody becomes a champion  
30 and they have a very sincere and heartfelt belief that this is a good thing,  
31 or it works, or they know it's the right thing. And typically there's not a  
32 lot of money for rigorous evaluation and so forth.

33 So, I'm just curious whether you think we're dreaming big in  
34 thinking of adding questions or whether just even knowing what the  
35 incidence of these is, and for which kind of victims, for what kind of  
36 offenses the programs seem to matter or not.

37 Even having a very high-level view would provide a starting  
38 point for a different research agenda, but it at least would give a nice  
39 panoramic view. So, I'm curious whether you think that makes any sense.

40 Ms. Leary: I think what you're really asking is a question that pertains to  
41 victims' rights in general with respect to the criminal justice system.  
42 Anyway, the right to be notified about court proceedings, the right to be  
43 present, the right to be heard, the right to deliver a victim impact  
44 statement orally or in writing, is that correct? Yes.

45 I'm not sure the NCVS is the right vehicle for this. Bear in mind  
46 that only about 20 percent of crime victims ever walk through a  
47 courthouse door (or send paperwork through a courthouse door if they  
48 don't show up themselves).

1           So, I'm not sure really that that's the right instrument, although I  
2 would say that I think it's an area that we definitely need more research  
3 on. From my perspective, that kind of research is particularly important  
4 because the criminal justice system has historically been all about the  
5 defendant and protecting due process—and it should protect due process.

6           But the victim, from my perspective, is just kind of treated like a  
7 piece of evidence—an exhibit entered into evidence. And then you ship  
8 them off to the case file. Over the past few years, we're beginning to  
9 recognize that victims are a very critical, important part of the whole  
10 criminal justice system and have a parallel set of rights that do not  
11 undercut the defendant's rights.

12           So, research, I think, would give us a better understanding of  
13 that and bear that out. In any event—regardless of what the findings  
14 would be—I think it's important to understand the exercise of those  
15 rights. What does it mean for victims? What does it mean for the criminal  
16 justice system? Does it have an impact on due process? It would be great  
17 to have research on that.

18       **Mr. Perry:** My name is Steven Perry from BJS.

19           I'd like to ask a question regarding the methodology issue that  
20 was raised earlier. Having worked at the Census Bureau and at BJS, we  
21 have a longitudinal survey looking at or tracking the persons versus the  
22 households.

23           Is that something that's been realistically thought about,  
24 considering the cost, and also I wanted to raise a question about web data  
25 collection—the feasibility. Will it work?

26           Working in Census, one of the surveys coming to mind in the  
27 Demographics Survey Division is what they call SIB, a longitudinal  
28 survey.

29           One early methodological issue was non-response, because it  
30 was so long—I think 4 years. For 4 years, every 6 months (5 or 6  
31 months) they were going to someone's house. But they developed  
32 another survey based off of those non-respondents. It was smaller and  
33 cross-sectional in type.

34           Is there a way without making NCVS bigger every time there's  
35 an emerging issue (like computer crime)? Maybe a core NCVS but [with]  
36 these other type web-based modules that can be updated?

37           For instance, if a respondent said yes, I was a victim of a sexual  
38 assault, rather than going into detail, could there be another stand-alone  
39 website where they could go and log in (in privacy) and answer those  
40 specific and sensitive questions and then submit it in some sort of  
41 fashion?

42           I'm just raising the question because I know it's really  
43 expensive having the interviewers to go out there and if we add five  
44 questions, it adds a large amount of money.

45       **Mr. Rand:** These are all things that we are beginning to look at as we  
46 move to redesign the survey. How do we decrease the need for personal  
47 visit? How do we increase other alternative modes, either by telephone or

1 by self-administered, possibly on the Web—as well as the structure of the  
2 survey?

3 Should it be a core with a lot of supplements? Should it be a  
4 core with follow-ons, you know, longitudinally?

5 We're just at the very beginning of this process. There's a lot of  
6 research that we're initiating right now to look at a number of these  
7 different issues. So, the structure of the survey 5 years from now will  
8 probably be very different from what it is now, although it's too early to  
9 tell exactly what it will look like.

10 Any other questions or comments?

11 **Mr. Hartley:** I'm Dan Hartley from the National Institute for  
12 Occupational Safety and Health, NIOSH.

13 We quote NCVS data in our publications quite a bit. One of the  
14 concerns we have is the limited number of industry and occupational  
15 codes that get reported. I know Lynn's paper mentioned they do collect it  
16 for all respondents.

17 So, are there plans in the works to get an SOC code for  
18 occupations and mixed codes for industries for all of the respondents so  
19 we could have more to report from NCVS in our publications?

20 **Mr. Rand:** There are two issues. One is related to that. We actually get  
21 those codes for victims. We have a set of pre-coded items in the screener  
22 to get the population estimates, and so we have to do a crosswalk  
23 between the mixed and the SOC codes to get numerators and  
24 denominators and tie those together.

25 One of the limitations, though, in using the codes is the small  
26 numbers of cases we get for individual codes. They have to be  
27 aggregated up into broader categories when Census produces a public use  
28 tape.

29 So, there are limitations—even when you get those codes—in  
30 the level of detail in the occupations. And that's something that we are  
31 looking into right now. Lynn, I think, is working with us on that, on  
32 aggregating the codes into useful categories and we expect to be able to  
33 get those on the public use very shortly.

34 Well, if there are no other questions, I would like to thank the  
35 panel. You did a terrific job. We really appreciate it and also thank you  
36 all for all your comments and suggestions and questions.

37 **Mr. Cohen:** Thank you. Good afternoon. My name is Thomas Cohen,  
38 and I've been a statistician at the Bureau of Justice Statistics for nearly 5  
39 years.

40 Most of my work at BJS focuses on courts and adjudications  
41 and I'm going to be introducing the Courts and Adjudications part of our  
42 Data Users Workshop.

43 We have a panel of three distinguished experts here to discuss  
44 Courts and Adjudications. The first of these is Professor Theodore  
45 Eisenberg.

1 Professor Eisenberg will be presenting on the paper titled The  
2 Need for a National Civil Justice Survey of Incidence and Claiming  
3 Behavior.

4 Professor Eisenberg is the Henry Allen Mark Professor of Law  
5 at Cornell Law School. Professor Eisenberg has emerged in recent years  
6 to become one of the foremost authorities on the use of empirical analysis  
7 and legal scholarship.

8 After graduating from the University of Pennsylvania Law  
9 School, Professor Eisenberg clerked for the U.S. Court of Appeals in the  
10 District of Columbia and for Chief Justice Earl Warren of the U.S.  
11 Supreme Court.

12 Professor Eisenberg has become a groundbreaking scholar,  
13 using innovative statistical methodologies to examine such diverse legal  
14 topics as punitive damages, victim impact statements, bias for and against  
15 litigants, and chances of success on appeal.

16 Professor Eisenberg currently teaches classes on federal income  
17 taxation, bankruptcy and constitutional law.

18 One of our two discussants will be Mr. Richard Schauffler. Mr.  
19 Schauffler is the Director of Research Services at the National Center for  
20 State Courts and also heads the Court Statistics Project.

21 At the National Center, Mr. Schauffler has worked on the Court  
22 Performance Measurement Project and has helped develop the Core  
23 Tools Trial Court Performance Standards.

24 Prior to joining the National Center, Mr. Schauffler was the  
25 head of the Research Unit for the Administrative Office of the Courts in  
26 California and headed the California AOC's Data Integrity Project.

27 Our other discussant will be Don Goodnow. Mr. Goodnow is  
28 the Director of the Administrative Office of the Courts in New  
29 Hampshire and has been in that position for 12 years. Mr. Goodnow also  
30 chairs the Court Statistics Project Advisory Board Committee.

31 Mr. Goodnow, prior to becoming Administrative Director of the  
32 New Hampshire Courts, served as the Clerk of the New Hampshire  
33 General Jurisdiction Trial Courts for 14 years.

34 Professor Eisenberg will have 20 to 30 minutes to present on his  
35 paper and then Mr. Schauffler and Mr. Goodnow will each have 15  
36 minutes to respond to the ideas raised by Professor Eisenberg and also to  
37 comment on the BJS Courts and Adjudication Statistical Programs.

38 Before we get started, I'd like to thank our panel here for  
39 attending this session. I think we have a really interesting panel and an  
40 interesting paper here.

### 41 **Session 3: Courts and Adjudication**

#### 42 **The Need for a National Civil Justice Survey of Incidence and** 43 **Claiming Behavior**

44 **Mr. Eisenberg:** That's me. Okay. Well, thank you, Thomas, and thank

1 BJS for inviting me to speak today.

2 I prepared the slides (slides not included here) earlier today and  
3 it's been a long day, so they'll be as fresh to me as they are to you as we  
4 look at them. I have to say listening to a lot of the presentations  
5 throughout the day, the civil side feels a little bit like it doesn't belong.  
6 That is, BJS historically has tended to focus on criminal stuff. (I think  
7 studies of law-related problems outside the law schools generally do  
8 that.)

9 But if one has to connect things to criminal, I think it's not that  
10 hard; that is, people are rarely born committing crimes out of the womb.

11 Something in the processing of people through society leads  
12 them to commit crimes, and it seems to me we can't understand crime  
13 just by studying victims of crime. We have to understand the causes of  
14 crime. You really have to understand the civil society in which people  
15 grow up—the problems at home and the problems with debt and other  
16 problems that may be associated and that generate the crimes that wind  
17 up being studied.

18 So, we all face a range of civil justice issues throughout our  
19 lives. Maybe you've been involved in an automobile accident. Maybe, if  
20 you're like me, you've had disputes with credit card companies. Maybe  
21 you've had disputes with merchants. Maybe you've had debt collection  
22 people call you up when you owe money every day—every few hours of  
23 every day and they won't leave you alone. Maybe you've been the victim  
24 of some form of race, sex, or other discrimination. Maybe you've had  
25 trouble on a house closing. Maybe you've had trouble with a lawyer.  
26 Maybe the government hasn't always performed perfectly in its dealings  
27 with you. Maybe you've had marital problems leading to divorce or child  
28 custody battles. Maybe a landlord didn't treat you perfectly and basically  
29 life sucks.

30 And yet none of these are necessarily crimes, so they tend to fall  
31 through the cracks of serious academic and government study. Yet civil  
32 justice issues are probably more common than criminal issues.

33 If we look at the National Crime Victimization Survey of 2005,  
34 it reports 20 violent crimes per thousand people and 150 property crimes  
35 per thousand people.

36 If we look at the limited data we have about the incidence of  
37 civil justice problems, going back to when American Bar Association,  
38 American Bar Foundation study in 1977, 120 per thousand suffered a  
39 long-term risk of serious personal injury, much higher than the violent  
40 crime rate, and 400 per thousand suffered a risk of serious property  
41 damage.

42 Another incidence study from the Civil Litigation Research  
43 Project of Wisconsin Law School in 1980-81 found a 3-year risk rate of  
44 416 per thousand of having a civil justice grievance. And so civil  
45 justice—like the crap we encounter in daily life—is encountered by  
46 everyone else in daily life, and maybe we should start being systematic  
47 about quantifying how often it happens.

48 How important can it be to have civil justice data? Well, I think  
49 that, although crime is important, the quality of life for those not

involved in the criminal justice system as well as those involved in the criminal justice system depends on a well-functioning system of civil justice, that is, the non-criminal aspects.

Civil justice problems can lead to devastating consequences—consequences important as, say, a major crime wave which we wouldn't hesitate to study. For example, leaks in our system of regulating drugs can lead to many unnecessary deaths or injuries or incredibly increased health care costs.

Perhaps you've heard about Vioxx. I think that settlement is still pending, where somehow the Food and Drug Administration approved a drug that increased the risk of heart attacks.

In defense of the FDA, the company, Merck, withheld the data on heart attacks from the New England Journal of Medicine when they published the leading study on it, and the New England Journal of Medicine politely published something called an expression of concern when they learned that the heart attacks data had been withheld.

So, lots of people simply died because we didn't have an effective system of regulating drugs.

If you're a female and reached a certain age, you were told to go on hormone replacement therapy. That turned out to be a mistake and that, too, got approved and leaked through the system.

One of the things I like to do—you're not a uniformly old enough audience, but of those who think they're about my age—

**Mr. Forst:** How old is that?

**Ms. McCoy:** I'm not saying anything.

**Mr. Eisenberg:** It's double digits. Firmly into double digits.

If you think you're about my age—you don't have to reveal your own medical history, you can just know someone—do you know or are you on a statin drug, like Lipitor?

**Ms. McCoy:** I know someone.

**Mr. Eisenberg:** You know someone. You're not on it, I understand. Okay. I think at least for the otherwise healthy females in the crowd, there's absolutely no evidence that it produces a reduction in the risk of heart attacks which, probably, you haven't been told. That will come later.

So, random control studies, the RCT, random control trials are done on selected groups by people funding the studies. They did not reach the broad household level and so we don't really have great incidence reports on use of drugs or adverse effects of drugs. We simply are relying on the random control trials done by people seeking to sell drugs, and the adverse side effects are, likely, systematically underreported.

If you followed the latest news on Lipitor and statins, you've probably seen many things. I now get an e-mail, when I'm on the road, I

1 get an e-mail every day from my wife saying did you see the one today?  
2 Today's one, I can't put it up, memory loss, right.

3 So, if you're on a statin, maybe you want to read, search the  
4 Internet for all the possible side effects, although probably you should  
5 hesitate before acting, consult your doctor because maybe they know  
6 more and maybe they don't.

7 Other civil justice problems: We all have debt. Late discovery  
8 of the scope of debt burdens at the household level. Well, we have  
9 something called the subprime lending crisis which suddenly emerged  
10 last year and seems to be able to sweep the whole world under in  
11 something close to possibly a worldwide recession or even depression  
12 already having major effects. Well, those are mere civil problems, right,  
13 but they're not unimportant, right.

14 Discrimination incidents that do not show up in the criminal  
15 system can show up in the civil system and lead to widely different  
16 attitudes towards civil justice and criminal justice on the part of racial or  
17 ethnic groups and, in general, we simply have no idea of what we need in  
18 the way of civil justice services.

19 We used to have the Legal Services Corporation and maybe they  
20 would assess it, but now we just don't know what the civil justice  
21 problems of Americans are and it's not a trivial gap in our knowledge.

22 We can't really assess the function of a civil justice system  
23 without household-level data about what's going on and the talk this  
24 morning let me prepare this little slide because we have a pyramid or a  
25 sieve system in civil justice that's just like the one on the criminal justice  
26 side; that is, concepts of leakage from remedying the baseline of  
27 incidents are fully analogous to the civil justice system.

28 If I work backwards with that first stage 4, why do I start there?  
29 Because that's where law schools educate people, right? We start by  
30 reading the published opinion.

31 If we start at stage 1, we'll have a thousand civil incidents.  
32 Maybe 1 in 10 of those will actually lead to a lawsuit filing. Maybe 1 in  
33 20 (roughly 1 in 20) of those will actually get to a trial in federal court, a  
34 lower incidence in federal court. Maybe in state court, you get 5 out of  
35 100 filings leading to a trial and 1 of those trials will lead to appeal.

36 So, 1 filing in 1000 is actually studied by law students and most  
37 of us have absolutely no information about the other 999 filings, the  
38 actual civil incidents that are going on in society.

39 The other role I think knowledge of civil justice incidents can  
40 play is to supplement data we do have on what's going on in courts. So,  
41 you can hang this on: "gee, we really can't understand what's going on in  
42 courts unless we understand what's going on outside of court."

43 For example, BJS and the National Center for State Courts have  
44 produced wonderful civil justice data and—to many people's surprise—  
45 the number of tort filings in the states (how much we can get systematic  
46 and roughly comparable data) has declined rather substantially over the  
47 last 10 years. Although many people claim we're forever in the midst of a  
48 liability crisis, filings are actually down quite a bit.

1           If we look at product liability filings, they fluctuate all over the  
2 place. And if we look at medical malpractice filings, they have one peak  
3 but they're down since 1996.

4           So, I think that's important because when people claim litigation  
5 explosion or endless liability or how litigious people are, it's nice to  
6 know the facts. Most people probably think these graphs go the other  
7 way and they haven't for years.

8           But even then, knowing the number of filings, what are we to  
9 make of it? That is, what do these time patterns mean unless we know  
10 the underlying incidence of tort, medical malpractice and other possible  
11 civil justice problems?

12           The decline in tort filings means one thing if it occurred against  
13 a stable background rate of tort incidents. People might be less inclined  
14 to sue. Maybe they just take their lumps when they suffer adverse events,  
15 like most of us do. Maybe they have difficulty finding counsel because  
16 it's very expensive to bring cases on a contingency fee basis. Or maybe  
17 they're finding their remedies outside the civil justice system through  
18 insurance, worker's comp, and the like.

19           We have no idea. So, we don't know if the decline in tort filings  
20 is because of constant behavior, changed behavior, or anything else. It's  
21 consistent with all kinds of outputs. The only thing we do know is filings  
22 are down, but, of course, if incidents are way up, that's one story. If  
23 incidents are way down, the filings per incident may in fact be up, and so  
24 we have no idea how the tort system is even handling the number of  
25 incidents in society.

26           In one respect, I think there's even more need for neutral data;  
27 that is, associate government-based with neutral, BJS-based with neutral.  
28 There's more need for neutral data in the civil side than there is on the  
29 criminal side. That is, there's not a lobby for the criminals, except for  
30 those liberals out there who always want to do things for them.

31           But nobody will show up in the room and say we haven't heard  
32 the criminal side, right. There's nobody—there's no national criminal  
33 survey—looking for the poor downtrodden problems of the criminal.

34           So, no credible interest group systematically puts out self-  
35 interested information about the wonderful behavior of criminal  
36 defendants. They just don't have a Washington lobby.

37           On the civil side, much of our information comes from self-  
38 interested groups with an axe to grind and that information dominates the  
39 media and dominates our perceptions.

40           If you were surprised by the decline in tort filings, then you  
41 were a victim of publicity about the civil justice system.

42           Consider this. I'll turn to Lipitor—the world's best-selling  
43 drug—and what we know about it. There's a major random control trial  
44 supporting the claim that it reduces heart attacks.

45           How many of you have seen an ad for Lipitor?

46           (Show of hands.)

1 I don't know how many hundreds of millions of dollars are  
2 behind those hands but it's a lot, enough to fund several dozen major  
3 medical studies.

4 So, it's the world's best selling drug and everyone's probably  
5 seen Robert Jarvik, who lost his father to a heart attack. And while you're  
6 weeping for him, he's rowing. And now you've probably seen that  
7 Representative Dingell is maybe subpoenaing him because he's not a real  
8 doctor or something like that. But what's lost in this is what the results of  
9 the actual random control trials are that are leading to the advertising for  
10 Lipitor, right?

11 The article published in Lancet, a very respectful journal, and  
12 I'm sorry for the medical language, I don't write it, the title of the article  
13 is "Prevention of Coronary and Stroke Events with Atorvastatin," (that's  
14 Lipitor) "In Hypertensive Patients Who Have Average or Lower-than-  
15 Average Cholesterol Concentrations in the AngloScandinavian Cardiac  
16 Outcomes Lipid-Lowering Arm, a Multicenter Randomized Control  
17 Trial."

18 That's the title. (Those of us in academia or government might  
19 feel rather succinct at this point.) So, because their titles are so long, they  
20 have to name the studies, so they call this one ASCOT. The background  
21 of ASCOT, this is quoted from the article, "the lowering of cholesterol  
22 concentrations in individuals at high risk of cardiovascular disease  
23 improves outcome. No study, however, has assessed benefits of  
24 cholesterol lowering in the primary prevention of coronary heart disease  
25 in hypertensive patients who are not conventionally deemed  
26 dyslipidemic." I guess that's bad cholesterol.

27 Interpretation. I didn't give you the results, but here's their  
28 interpretation. "The reductions in major cardiovascular events with  
29 Lipitor are large."

30 So, this is the study, the random control study on which the  
31 Jarvik ads are based and maybe some of you have seen the 36 percent  
32 reduction in heart attack study. This is the random control trial from  
33 which those numbers come.

34 What does it really say? What does it, in fact, say? Well, here's  
35 a quote from the article in Lancet. "No benefit was apparent among  
36 women." I don't think that's made it into the advertising.

37 In fact, here's the table from the article and I brilliantly  
38 highlighted it in yellow where they break out the male and the female  
39 results and you'll see—well, I thought this was a quasi-statistical  
40 audience, so I actually put up the raw table.

41 So the unadjusted hazard rate column is the one we want to look  
42 at and what you see for men, the 0.59, so in fact for men, it reduced heart  
43 attack, bad heart outcomes more than 36 percent. It reduced them 41  
44 percent.

45 Now look for women. Look down this column. Everything with  
46 a zero in front of it means it improved outcomes. For women, there was  
47 an increased risk of heart attacks. Not statistically significant, right.

48 So, you're a woman. Your cholesterol has shot up (perhaps post

menopause). You go to your doctor. He says, hey, your cholesterol shot up. Why don't you get on Lipitor? Does your doctor say, "well, I'd like to tell you it actually increased the risk for women, although not significantly"? Or does your doctor just say get on Lipitor? That is, does the ad say, "women, you might want to know that Lipitor, if anything, increased the risk"? Or does the ad say 36 percent reduction in heart attack?

What's interesting is that I've now completed an analysis of all the statin random control trial studies where you can break out results for men and women. There is no study in which an effect was shown for women. And in every study, an effect was shown for men. Right. This pattern is replicated for all the other statin drugs. There's not a single study showing a reduction in heart attacks, and people who haven't had a previous heart attack as a primary prevention method for statins.

I'm not sure how this plugs into the topic, but it's very interesting. That is, civil justice problems—well, the civil justice problem, I think people face that's easy to describe, is you've been sold snake oil. If these numbers are right and you weren't told that your risk might go up, albeit insignificantly, then you might not have taken that drug and you should get your money back, right? So, you have a civil justice problem, but we have no idea of the scope of that problem either.

We don't have any otherwise healthy women that are on statins because their doctor told them to be because lowering cholesterol is an unabashed good (we are told) or because they really are worried about getting heart attacks rather than simply lowering their cholesterol. That litigation will be very complicated. It will be nice to know how much of this is going on.

We're talking about wastes of tens of billions of health care dollars for drugs that are not needed.

Okay. Concluding thoughts. I think if a National Civil Justice Survey is to be useful—and I understand it competes for dollars with everything else and it is really hard to compete with crime, crime sells—civil justice: well, when you say "justice," you hear "crime," right?

You have to say "civil justice" to make it clear that you're not talking about crime. And so (with all apologies for competing for dollars with other entities) if a National Civil Justice Survey is to be useful, it has to be big. It has to be done regularly. And I think only the government would be capable of actually pulling this off. It's a BJS-level, Census-level type endeavor.

We need to know about geographic variation. We need to know about demographic variation. Civil justice problems afflict men and women and blacks and whites at different rates and we truly have no idea about most of them.

Again analogous to crime incidents, we've heard a lot about different patterns of crime incidents for men and women and racial groups. That same thing goes on in the civil justice system. We just don't know about it.

I think, on the other side, a National Incidence Survey would tell us something about where we need lawyers, where the government might

1 actually be usefully applying legal services.

2 We know that on the criminal side we're massively underfunded  
3 and that public defenders are overworked and underpaid, and most  
4 people have to plea bargain because if they go to trial, they'll get a bigger  
5 sentence and all that.

6 We have no idea what the true civil justice needs of society are,  
7 even though the incidence level of civil justice problems is incredibly  
8 high. We just don't know what it is.

9 So, my proposal—and it's easy to propose and I'll let BJS work  
10 out the details—my proposal is that we regularly survey society for some  
11 intelligent assessment of the incidence of civil justice problems.

12 Thank you.

13 **Mr. Cohen:** Thank you very much, Professor Eisenberg. Our first  
14 discussant actually will be Don Goodnow discussing the topics of  
15 Professor Eisenberg's paper and also other issues related to the BJS  
16 Court Programs.

## 17 Discussants

18 **Mr. Goodnow:** Thank you, Thomas. I'd like to begin by announcing that  
19 I am not on a statin drug, although I did find Professor Eisenberg's  
20 comments very interesting.

21 I'll make a couple of quick comments about courts, a couple of  
22 comments about areas of study that I think would be helpful, and I will  
23 have a couple of brief comments about Professor Eisenberg's paper.

24 First, though, I want to thank the BJS for having all of us here.  
25 This is a very valuable gathering, and I want to thank BJS especially for  
26 including representatives of courts and people interested in courts.

27 This is a huge opportunity for us and I think that there is an  
28 enormous appetite in the court system for more empirical data—not only  
29 about what happens specifically in the courts—but also about the sorts of  
30 things that Professor Eisenberg is talking about and the issues we  
31 discussed this morning.

32 My comments come to you as those of a practitioner. I echo the  
33 comments made this morning by Director Carl Peed when he said he was  
34 interested in actionable research. That's the perspective that most of my  
35 colleagues, state court administrators, bring to the table.

36 We are less interested in advancing the sum total of human  
37 knowledge for abstract reasons and much, much more interested in  
38 learning what we can about courts or about our society with an eye on  
39 making changes to the courts so that we can operate those court systems  
40 more effectively and more quickly, deliver dispute resolution services  
41 more quickly, so that we can be more fair to those who bring their  
42 disputes to court, and especially so that we can be more accessible to  
43 those with disputes.

44 The culture, I think it's fair to say, in state courts in the United  
45 States is changing, albeit very slowly. If you were transplanted from the

1 18th Century, either in the United States or from Great Britain, to a  
2 courtroom in the United States, you would feel right at home. You would  
3 recognize the surroundings. You would identify with the different players  
4 in the system. There would be very little that would be foreign to you.

5 I think you can say that of very few other institutions—maybe  
6 the exception is some religious institutions—but that certainly is  
7 characteristic of the courts.

8 Nonetheless, there is a cultural change afoot. While, in the past,  
9 I think courts focused specifically on doing individual justice in  
10 individual cases—focused almost exclusively on that—I think the change  
11 is occurring where judges and court administrators are seeing themselves  
12 as part of a larger societal institution with other responsibilities than to  
13 focus on what's going on in a particular case before them at that time.

14 This shift from a sort of micro interest to a macro interest, I  
15 think, is part of the source of the appetite for more empirical data about  
16 courts. I think there is huge interest in court operations. I think there's  
17 huge interest in outcomes of litigation or of dispute resolution, and I  
18 think there's great interest in the constituents that bring those disputes to  
19 courts.

20 I have five areas that I think might be worthy of consideration  
21 for research. The first, and probably the first on the minds of most state  
22 court administrators, is finances.

23 We need to know more about the costs of litigation—and let me  
24 take a little digression here. The background to this is obviously that  
25 public resources are not expanding as fast as our enthusiasm for spending  
26 them is. Whether it has to do with mischief in the Middle East or  
27 problems related to the cost of health care or other federal entitlements,  
28 the handwriting is on the wall.

29 Courts need to be more cautious and more attentive to the costs  
30 of their operations and more specifically to the costs of litigation.

31 Actually, while we talk about the costs of litigation—and this is  
32 a feature in Professor Eisenberg's paper—courts are really not about  
33 litigation. Too frequently, we think of courts as dealing with litigation,  
34 but if you reflect on the Professor's comment about 2 percent of the cases  
35 that are brought into court going to trial, you've got to ask at some point  
36 what happened to the other 98 percent. And to the extent we focus  
37 entirely on trials and trial outcomes, we're missing the boat because  
38 courts are not trial institutions, they are dispute resolution institutions.

39 I say that because I think a great deal of attention is needed to  
40 what goes on to that other 98 percent of cases after they've been filed in  
41 court.

42 Another aspect of the costs of court operations is both fines and  
43 fees. I was surprised when a number of my colleagues expressed an  
44 interest in studying court filing fees, until I learned that in Indiana, the  
45 state court administrator says there are some 36 special surcharges or  
46 penalty assessments or whatever collected by the courts and they all go to  
47 fund other institutions around the state of Indiana.

48 It seems a small matter, but it resonated with my colleagues, so I

1 share it with you.

2 Another area of interest in terms of finance is fine collections,  
3 the capacity of courts or the capacity of state governments to enforce the  
4 orders issued by judges in terms of criminal penalties.

5 In New Hampshire, we report that we collect over 90 percent of  
6 fines ordered within 3 years of a judge imposing that fine. I know there  
7 are other states where court administrators report collecting between 60  
8 and 70 percent of fines imposed.

9 There's clearly plenty of opportunity for serious investigation  
10 into that. Either we're counting very different things or somebody is not  
11 tending shop and those fines are going uncollected.

12 Another huge interest in state court administration is in specialty  
13 courts. Courts in the 21st Century are actively collaborating with our  
14 colleagues and our counterparts in executive branches of government as  
15 well as in other agencies that are addressing social issues around the  
16 country. Hence, we have drug courts, we have mental health courts,  
17 domestic violence courts, firearms courts, business courts, teen courts,  
18 and there are many, many more.

19 Many of those court special dockets are already analyzed and  
20 studied and evaluated. However, I think we can all agree that BJS as an  
21 independent institution with nationwide impact could certainly improve  
22 those analyses.

23 It's not going to be a secret to anybody that too often the people  
24 doing the study of the success or failure of the outcomes from these  
25 specialty courts are actually heavily invested in the results. So, the  
26 independence of the Bureau of Justice Statistics would be very helpful in  
27 that regard.

28 Another huge challenge in the court system is one we can't even  
29 agree on a name for—whether to call these people self-represented  
30 litigants, unrepresented litigants or pro se litigants, and I'm sure there are  
31 other terms. I know there are other terms the judges have used for them  
32 that I won't share with you.

33 By all reports, this is an issue that is growing dramatically in  
34 state courts as well as in the federal courts but, as I say, we lack even a  
35 common vocabulary. We certainly lack a consistent and objective way—  
36 a dependable way of counting self-represented litigants. We certainly  
37 have no way of measuring their impact on state court systems, and we  
38 don't even understand who they are, why they are, or what types of cases  
39 they are most active in.

40 The fourth area that I would suggest deserves attention is  
41 timeliness in courts. Both the American Bar Association and the  
42 Conference of State Court Administrators have developed guidelines for  
43 time standards for court operations and those time standards typically are  
44 structured such that a court (to be effective) should dispose of 90 percent  
45 of its docket within a certain number of days, and then a hundred percent  
46 of the docket after another period of time has expired.

47 Well, many states around the country have adopted those  
48 standards, but I don't believe we have a national assessment of how well

1 courts are doing in addressing either the standards of the American Bar  
2 Association or the standards of the Conference of State Court  
3 Administrators. Nor do we know if the standards established by different  
4 state court systems have anything in common with the two proposals by  
5 the groups I've mentioned.

6 The last area that I'll mention that I think deserves attention is  
7 the area of the linguistic diversity of our community.

8 Most court administrators view this matter as an issue of  
9 fundamental access to justice. It ought to be obvious to all of us that if  
10 you cannot speak English or understand English well, your access to  
11 justice, at least in state courts in the United States, is going to be limited.

12 We don't know the scope of the issue. It certainly cuts across  
13 civil and criminal boundaries. It certainly has a huge impact in marital  
14 cases, domestic relations cases. We don't know the costs. We don't know  
15 the percentage of cases. We don't know the impact of interpreters on the  
16 workload for judges and for staff.

17 We do know the issue is growing very quickly. We don't know  
18 that it's a problem. While New Hampshire is among probably the three or  
19 four most homogenous states in the country, our budget for court  
20 interpreter services has been increasing in the last few years at an annual  
21 rate of over 30 percent. It has finally leveled off but that level of increase  
22 obviously cannot be sustained.

23 As regards Professor Eisenberg's proposal, I'd like to endorse it.  
24 I think that state courts can only benefit from learning more about our  
25 constituency. As I said earlier, state court systems are performing some  
26 of the 180 degree turn that Mr. Sedgwick mentioned earlier.

27 I think that instead of focusing entirely on the case before us, I  
28 think courts are viewing themselves and court administrators are viewing  
29 their institutions as having a larger role and viewing themselves  
30 increasingly as being customer service organizations.

31 Well, we cannot be effective customer service organizations if  
32 we don't know more about the claims both made and, as Professor  
33 Eisenberg mentions, the claims not made.

34 I would like to amplify a little bit a comment that I made earlier.  
35 Professor Eisenberg talked about the 2 percent of cases that go to trial,  
36 again leaving unanswered questions of what happens to the 98 percent  
37 that do not go to trial.

38 I think we need research on how those cases are disposed. I  
39 think we need—as I've said, I think we need to begin thinking of courts  
40 not as trial organizations but as dispute resolution organizations. We need  
41 to know the impact of alternative dispute resolution. It's sweeping the  
42 country. We're spending huge sums of money on ADR and we really  
43 don't know, I think, definitively what the impact is in terms of the time it  
44 saves or in terms of the dollars it saves for litigants and for would-be  
45 litigants.

46 I'd like to conclude by thanking Mr. Sedgwick and the Bureau  
47 of Justice Statistics for convening this group. You are doing valuable and  
48 very important work, and I look forward to seeing the outcome of the

1 good work done here today.

2 Thank you very much.

3 **Mr. Cohen:** Thanks, Don. So, our last discussant is Mr. Richard  
4 Schauffler.

5 **Mr. Schauffler:** Thank you, Thomas, and thanks to BJS for convening  
6 this. It's been very thought-provoking already and I hope to continue in  
7 that vein, recognizing the perilous position I occupy as the last thing  
8 between you and a cold beverage of your choice today.

9 On behalf of the National Center, we've worked closely with  
10 BJS for a number of years on a number of projects: the Court Statistics  
11 Project, the Civil Justice Survey, the gathering of state court organization  
12 cases on appeal, and BJS has demonstrated a real commitment to  
13 empirical data and helping understand, as was alluded to earlier, the  
14 evidential basis of what's going on in the courts.

15 Ted's paper raises a number of important questions about civil  
16 litigation. A way you might ask those again is, "what kinds of grievances  
17 end up in disputes in courts?" And once we know that, we could ask the  
18 questions, "what do we make of that? Who's in? Who's out?"

19 Obviously not all disputes belong in court. There are probably  
20 better informal and other ways to resolve them. But we don't know  
21 whether there are a lot of wrong reasons they might be disappearing out  
22 of the system—because the process is too expensive, because the process  
23 is too time-consuming, because the overall length of time to get any  
24 resolution is too long, because once you get a judgment it's hard to  
25 enforce, because the process favors the big and the wealthy against the  
26 small and the poor.

27 All those might be perception or they might be fact. They might  
28 be a mix. But the point is that we don't have an empirical basis for  
29 understanding those [issues] as you go through all the different case  
30 types, either on the civil or criminal side, small claims and so forth.

31 So, part of what we're trying to do at the National Center—in  
32 addition to gathering all this data—is to really figure out how to  
33 transform it into knowledge thereby, as Don alluded to, really  
34 transforming the management culture of the Judicial Branch of  
35 government.

36 It's largely based on gut feeling, anecdote, knowing the right  
37 thing, looking someone in the eye, years of experience, some of which  
38 probably would be confirmed by empirical evidence but some of which  
39 probably not.

40 So, what don't we know? Well, almost anything you could think  
41 of we don't know. We don't know who the litigants are. We don't know  
42 what the causes of action on a fine enough level of detail are in these  
43 cases. We don't know what it is about the legal process that shapes  
44 settlements and all those points along the way.

45 What does the addition of an alternative dispute resolution  
46 process do to the caseload? How about mediation? How about  
47 mandatory mediation versus voluntary? The use of programs, like short

1 trials or limited discovery. What do those practices do?

2 Courts can hope for the best when they implement these  
3 programs but really don't know. It's equally probable they could be  
4 creating perverse incentives. There are claims of private judging, the rise  
5 of private judging whereby let's say two large corporations having a  
6 dispute will hire an American Arbitration Association or another private  
7 dispute resolution firm, get a retired judge who has experience in that  
8 area and construct a dispute resolution process on their own—removing  
9 that case and whatever settlement comes out of it from the public  
10 domain.

11 Is that a good thing? Bad thing? Does it matter? Is there a brain  
12 drain from the bench for these more highly compensated positions? All  
13 that is a matter of speculation, but no one really knows the answer.

14 All of these things lead to a number of important policy  
15 questions, such as: Should legal services be unbundled? If so, how?

16 Also, who are these self-represented litigants? There's a lot of  
17 stereotyping. Oh, these are the honest poor, the indigent who really just  
18 can't afford a lawyer. Well, there's some anecdotal evidence that  
19 suggests it's really a bimodal population, those folks and a lot of college  
20 grads who are the ones on the self-help websites downloading forms and  
21 doing all that other stuff that we think works. Well, it might work well  
22 for them. I really doubt it works well for folks on the other end, but again  
23 these are belief systems that are out there and not empirically-based  
24 management decisions.

25 So, because we're thinking big today, I want to add to the list  
26 and build out on the work. BJS has done a number of things which are  
27 detailed here, both on the civil and criminal side, the prosecution and  
28 defense side, but because the list should be longer, I'll try to add to it.

29 Don alluded to alternative dispute resolution. That's a big, big  
30 area in terms of understanding what it is, how it works, which case types  
31 does it work for, and in what forms—mandatory, voluntary—using what  
32 kinds of neutrals, and the same is true for other forms of non-trial  
33 dispositions.

34 We simply don't know what they are. They haven't been studied  
35 in any depth since, I think, the 1992 BJS Survey of State Courts.

36 Class action and mass torts. It's curious that states have these,  
37 but there's no common definition of even what one of these things is.  
38 How many defendants constitute a mass tort? 20? 40? 15? Is the cause of  
39 action the thing that triggers that classification? Which of those cases  
40 actually end up getting certified as such? What are the rules that govern  
41 those decisions? Are they the same across the country? We don't know  
42 that either.

43 There's a lot of advertising about "judicial hell holes," they're  
44 called in the advertising, claiming that there are places where you don't  
45 want your big case to go because the juries are giving away the store, or  
46 the judges. True? False? Who knows?

47 It's never been the subject of systematic action and it's a source  
48 of great tension between the federal courts and state courts as to who has

jurisdiction over these and some movement to attempt to remove more of those to federal courts.

Similarly, effective practices. Don as a practitioner, and his colleagues are trying to manage limited resources. So, some things have been done to try to do that, to tailor civil processes down, make short trials, smaller juries, limited discovery, limits on the number of witnesses.

We don't know if those work or not or in what cases they work and are seen as appropriate. In many states, people look at those and opt out into the higher court and why limit myself now? If I discover some fact down the road, I don't want to be prematurely limited in what I can do. So, are these rules working? Do they make any sense? We don't know.

There are some specific research opportunities that, as one discovers datasets around the country, (Florida, Michigan to a lesser extent, Texas) have databases of closed medical malpractice claims. You could actually get the real number, the actual costs of these cases and find out what they actually cost. It's like Ted's trend line. I would be willing to bet it's a little bit different than the perception and there are some folks at Duke University that have been doing that, Neil Vidmar and others.

Similarly, South Carolina implemented a procedure in 2003 that requires public disclosure of terms of settlement in cases. Well, it would be nice to do it pre-2003 and post-2003 to see what happened as a result of that, what effect that had on civil litigation. So, in a way, one cost of using the court to enforce your judgment is disclosure of the terms of that settlement, an interesting public policy idea. We need to know if it made any sense.

A handful of states (maybe about 10) have moved their court data into data warehouse environments. This creates a possibility of doing some interesting case-level data mining and greatly reducing the costs of that data collection which is now done quite manually in these large studies. We need to look at what those data warehouses have in them and try to figure out what they're ripe for studying.

We mentioned today, I think maybe the loudest steam that echoed across all these domains was the issue of elders in some form or fashion; whether that's law enforcement, as victims, and certainly in the courts. It's referred to as elder abuse. Elder abuse is the tip of a very gigantic iceberg of people who are under the care of the court, who have been appointed guardians, for whom the court is legally responsible to ensure that their physical, mental and other well-being is provided.

This is a gigantic pig in the python demographically that's moving through the system. Right now courts can't manage these cases. I was just in L.A. looking over 2,000 files and there's nothing in some of them or obvious malfeasance in some of them. The court is unable to review these because it doesn't have the business rules, processes, information systems to support this, and that problem is going to get exponentially worse.

So, this whole issue of counting these cases; adjudicating them; how you connect courts, law enforcement, and victim services all

1 together to deal with that is just an enormous issue that is coming down  
2 the pike.

3       Lastly, the impact of jurisdictional limits. As states try to figure  
4 out, for instance, small claims, should that be a \$3,000, \$5,000, \$7,000,  
5 up to \$10,000? Where's the right point? No one really knows. What  
6 happens when you create concurrent jurisdiction at those levels and you  
7 could file in more than in one place? That's another big issue and that's  
8 ripe for some additional empirical research.

9       Small claims itself is a huge area. Stereotypically, that's where  
10 you're going to go with your \$500 suit because your neighbor's tree fell  
11 on your fence, but maybe that [docket] is full of Verizon and Sears going  
12 after consumer debtors. Maybe that's all that's left of small claims  
13 anymore. We don't know that. Again, there's some anecdotal evidence to  
14 suggest that there's a lot of pressure moving it in that direction.

15       Then you have to ask yourself why the public should pay for  
16 debt collection for large corporations? It's a policy question, but it  
17 deserves an empirical answer.

18       On the criminal side, there's a need to do a comparable appeals  
19 study on the criminal cases just as BJS has done on the civil side. We  
20 don't know which cases get appealed, why they get appealed, what the  
21 win rates are, reversal rates, affirmation rates, and so forth. It's important  
22 to know that if you're trying to manage the system as a system. Knowing  
23 what those appeal rates are and why they're taking place is important.

24       Don already brought up the fees and fines issue. For instance,  
25 the driver's fines in Virginia are just maybe the most egregious example  
26 of this form of extreme taxation that's going on through the courts. And  
27 what's happening, frankly, is judges increasingly refuse to impose these  
28 big penalties. So then we're all just going in a big wasteful circle here, as  
29 they become so unreasonable that—in the interest of justice—the judge is  
30 really just adjusting it back to where it used to be. So that's a big waste of  
31 everybody's time. Why don't we figure out what's reasonable?

32       Sentencing. Similar. We talked about this earlier this morning,  
33 but judges want to know which sentences work, which are appropriate.  
34 How do you integrate risk assessment into criminal sentencing in a  
35 meaningful way?

36       Virginia has a great risk assessment program for judges. There's  
37 not one other state—with the possible exception of Colorado—that has  
38 the data and the justice system integrated at the individual level to give  
39 you the information needed on an individual defendant to make an  
40 informed risk assessment decision. Never mind the political issue the  
41 judges have to face about letting criminals go when they avoid an  
42 incarceration determination.

43       So that's a small list of some additional topics for consideration.  
44 I think for all of us who continue to believe that there is—or should be—  
45 a connection between empirical research and information and policy, that  
46 BJS has been a beacon of hope for us in supporting these studies and for  
47 continuing to expand its agenda.

48       Those agendas have to be a combination of practitioner issues as  
49 well as exploratory, forward-looking issues. And I think one of the

1 themes today has been an attempt to look for ways to leverage issues and  
2 topics across the different domains and really integrate the effort. If you  
3 have limited resources, it makes sense.

4 One of the things in your knapsack should be a leatherman. It  
5 does 12 things at once, not a dedicated pair of pliers which only does  
6 one.

7 So, we need to look for those things that work like that. I think,  
8 at a time when court judicial elections, appointments, decisions are being  
9 increasingly politicized across the country, we need empirical  
10 information that's germane to the real purpose and work of courts. We  
11 need information that judges and courts can point to in order to change  
12 the discourse from one about individual decisions to one about what  
13 courts are for and how they are serving the public and who uses the  
14 courts. That information is critical for the future of Judicial Branch  
15 function.

16 Thank you.

## 17 Open Discussion

18 **Mr. Cohen:** Thanks, Richard. Now we're going to open up the forum for  
19 discussion, but before we start, I'd like to add a little clarification here. I  
20 think there were some statements made about not having good trial data.  
21 At BJS we do have some fairly good national studies in the criminal area  
22 that look at how felony cases end up in a trial and a non-trial. So that we  
23 have a pretty good handle on.

24 In the civil area we're weaker in the non-trials. We have a very  
25 good series giving detailed information on civil trials, but it's been a real  
26 challenge to try to get information on those civil cases that were not  
27 concluded by trial.

28 Richard mentioned Neil Vidmar's work in medical malpractice  
29 insurance claims research. We've also looked at that issue, and we were  
30 able to produce a report looking at medical malpractice insurance claims  
31 closed in seven states and that was our first foray into these non-trial civil  
32 cases. But that is going to be a challenge for us as well, as we continue in  
33 this area.

34 **Mr. Ment:** Thank you, Thomas. My name is Aaron Ment, and I'm from  
35 Connecticut. I have a brief comment concerning Richard's last few words  
36 about data warehousing.

37 We get into the criminal area there because we have found that  
38 the data mining is not only done by researchers but done by people who  
39 are interested in identity fraud. That really is an issue that transcends the  
40 civil justice issue but is an important issue and will become increasingly  
41 important as we continue.

42 I don't think any one of our panelists has mentioned the family  
43 side of the civil side which is a real problem for many of us. And some of  
44 the issues that we're facing there are brand new.

45 I'll just list one issue. Child custody is a problem. We not only  
46 have married partners, we have unmarried partners and we have same sex  
47 either married or unmarried partners and the issue for the courts is trying

1 to decide which, if any, of these are different than the others with respect  
2 to child custody.

3 So, I would suggest that, in addition to what we normally  
4 consider the civil side, the family side of the court, whether it would be  
5 custody, support, whatever, should also be studied by BJS and those  
6 interested.

7 **Mr. Schauffler:** Yes, I think the legal definition of what constitutes a  
8 family is a huge one right now.

9 Actually, this came up yesterday in a discussion with the FBI  
10 about domestic misdemeanor crimes with an element of domestic  
11 violence because, as it turns out, the definition of who's inside that circle  
12 varies widely from state to state. And grandparents—I would throw into  
13 that mix that you listed, Aaron, as well, for asserting legal rights for  
14 custody in some states. It's becoming quite confusing.

15 So, there is no standard across the states, and it shows up in  
16 many areas.

17 **Mr. Goodnow:** I would agree with Aaron's call for further analysis of  
18 family courts and domestic relations outcomes. We all, or at least those  
19 of us in the courts, know that there is huge interest in who gets custody  
20 and in the amount of child support and in whether that child support is  
21 collected.

22 Those are fiercely contested, intensely personal issues and  
23 greater empirical evidence data would be very, very helpful in  
24 formulating policy because now it's driven almost entirely by anecdote  
25 and tragedy.

26 **Mr. Cohen:** Through the Court Statistics Project we do have information  
27 on how many domestic relations cases are filed and disposed in state  
28 courts but that's it. We never have collected individualized case  
29 processing data on divorce, support, paternity cases. We've only focused  
30 in the CSP area on torts, contracts, real property trials.

31 **Mr. Forst:** This is my third session, so I'll make it brief. Just as Robert  
32 Jackson reported famously, I don't know, 50 or 60 years ago, the  
33 prosecutor has more power than any other public official, and I was very  
34 happy that between the mid '70s until 1992, BJS took the lead in  
35 reporting data on what happens after arrest, jurisdiction-by-jurisdiction,  
36 large cities, small jurisdictions, the huge variation in declination rates in  
37 screening from jurisdiction-to-jurisdiction and then what happens  
38 afterwards and the reasons for declinations, both nol processed and  
39 subsequent dismissals, how many cases went to trial, how many got pled  
40 out, how many went into the juvenile system and so on by jurisdiction.  
41 And it was a system that was growing between 1976, when there were, I  
42 don't know, maybe six to 10 jurisdictions, until 1992, when there were  
43 scores of them.

44 We were really learning about prosecution in ways that I think  
45 would have made Justice Jackson pleased, but today, I'm not aware of  
46 any cross-jurisdictional information on what happens after arrest.

47 We knew in 1992 that jurisdictions that had high rates of  
48 declination in the screening room also took a higher percentage of the

1 cases they accepted to trial and we knew which jurisdictions they were.

2 Washington, D.C. and New Orleans were jurisdictions that had a  
3 tougher evidentiary standard in the screening room, and they took a  
4 higher percentage of cases to trial. New York and some other  
5 jurisdictions, on the other hand, accepted almost everything that came in  
6 from the police and then had a ratio of pleas to trials that were much  
7 higher. And those are two different models of justice and we knew about  
8 that. Today we don't. I lament that and would like to put in a plea, if you  
9 will, for some sort of a return for that valuable information so that we can  
10 shed more light on what happens after arrest than we do now. Again, my  
11 point earlier was that we knew a lot about stuff in the 1970s and 1980s  
12 and in some respects, there has not been a continuation of that trajectory  
13 and this is one area that I think we could use some help.

14 **Mr. Cohen:** Starting in the early '90s, in the criminal area, I think we  
15 moved away from these jurisdiction-specific examinations of criminal  
16 cases and toward studies that aggregated all the urban jurisdictions or did  
17 a national estimate of felony case processing or sentencing. But I think  
18 you make an interesting point, that we lost a certain amount of detailed  
19 information about what's going on at the jurisdictional level when we did  
20 that.

21 And I'll turn it over to our discussants and Professor Eisenberg.  
22 To me, it seems as if a lot of urban courts today are collecting detailed  
23 case processing information on criminal cases. In the court community,  
24 what interest would there be in trying to collaborate to a greater extent  
25 with BJS to try to revive some of these jurisdiction criminal case  
26 processing studies?

27 **Mr. Schauffler:** I think for some issues, this is the 800-pound gorilla in  
28 the middle of the room because it's prosecutor charging policies and  
29 practices, plea practices that drive a huge extent of the court workload.

30 Now, courts are reluctant to say that. I'll say that here. It's a  
31 risk-provoking controversy because they don't want to irritate the large  
32 gorilla in the middle of the room, but it's a huge issue.

33 At the trivial level, it takes the form of things like, "I've got new  
34 prosecutors. I'm going to try every misdemeanor because I need to give  
35 them some practice." So, the whole court slows down. There's less  
36 justice in cases that need it because resources are getting drained for  
37 trivial things that are providing on-the-job training. And there's no  
38 agreement about the appropriate use of resources as a system and, at the  
39 most, at the higher levels, it leads to bigger problems.

40 For instance, with California's three strikes law, you had a few  
41 prosecutors who were openly disavowing the law because they felt they  
42 could do that in counties that hadn't passed it, although it was a statewide  
43 election.

44 There were prosecutors who were publicly saying I'm only  
45 using it for certain offenses, like sex crimes, thinking that would be  
46 politically a good thing for them to do, and there were some that were  
47 ignoring it but not publicly saying so. And there were some that were  
48 overusing it, you might say, overcharging all these, "steal a piece of  
49 pizza, it's your third strike." Because of the defect in California's version  
50 in which the third strike is not [limited to] a serious or violent felony.

1           So, some of those people are comfortable having their positions  
2 known and some of them aren't, and we could never get that study  
3 published because of the fear of provoking reaction. But we have to kind  
4 of get over that.

5           This is a huge system issue and, unfortunately, that's part of the  
6 system that seems the most politicized and that drives a lot of dynamics  
7 which are very unproductive and wasteful, frankly.

8 **Mr. Eisenberg:** And I think—just to reinforce the point—it goes from  
9 the prosecution of misdemeanors to get experience, to the decision to  
10 seek death which is also largely a prosecutorial decision. And what we  
11 found in studying—as you know—there are lots of studies of errors in  
12 death penalty convictions and rates.

13           There are a lot of—a higher rate than one would like of actual  
14 innocence—but also rates of convictions being overturned. And what we  
15 found was that one of the best predictors of the rate at which convictions  
16 would be overturned was the rate at which states sought the death  
17 penalty. That is, those with the loosest standard for seeking the death  
18 penalty, in fact produced the least death-worthy set of cases, which got  
19 reversed later on appeal and at enormous expense. Each death penalty  
20 prosecution is a real expensive proposition for both sides usually.

21 **Mr. Goodnow:** I would add that the activities and policies of prosecutors  
22 surely deserve some analysis.

23           I had an experience myself many years ago when the prosecutor  
24 announced to the press that he was no longer going to participate in any  
25 negotiated plea disposition in a court.

26           Well, the impact would be huge and, obviously, he could not  
27 keep his promise. But there's a serious question of whether that would be  
28 a valuable policy decision.

29           What would be the impact of failing to take a negotiated plea?  
30 Would the criminal cases plead without a negotiation, or what would  
31 happen? I think it's worthwhile.

32 **Mr. Cohen:** And just one additional point. At BJS, we do have the  
33 Census of State Court Prosecutors, which obtains very good  
34 administrative information about state court prosecutor officers. But  
35 because most of our criminal case processing studies have gone national,  
36 we've never really attempted to marry the Census of State Court  
37 Prosecutors with a more localized view of criminal case processing. I  
38 think on our end, that's something we need to think about doing more.

39 **Mr. Mahoney:** I'm Barry Mahoney from JMI (again).

40           Several thoughts. First, it seems to me that Ted's notion of  
41 looking at incidents and claiming behavior to provide the context for  
42 what happens in civil litigation and generally in civil societies is  
43 extremely important. If you go back to the original history of the idea of  
44 the National Institute of Justice, it was very much civil, including family,  
45 as well as criminal and that probably ought to be revived.

46           The second thought is that there have been an awful lot of good  
47 ideas here today. It seems to me, to go back to where Brian began this

1 morning, there's a big knapsack problem with a small knapsack. And  
2 there's an awful lot that's important. As you start thinking about this, you  
3 also get tied into what is and/or ought to be the role of the Bureau of  
4 Justice Statistics. It seems to me it's not to try and explain every  
5 variation. It is to try and provide basic statistical data that will enable at  
6 least a start on comparisons and enable researchers and state and local  
7 specific people to begin to make relevant comparisons, not to answer  
8 every question.

9 But it is important. And to the extent that you make your data  
10 relevant, timely, accurate, and useful, when used and comparable across  
11 jurisdictions it will be that much more valuable. Indeed, I think that the  
12 movement away from jurisdictional-specific data that Brian spoke of, and  
13 that you mentioned, Thomas, in the 1990s really stifled innovation and  
14 comparisons at local levels—certainly across the courts, trial court-level  
15 courts in the United States.

16 Finally, we've had some suggestions of bringing in more  
17 academic researchers and so forth, which is clearly desirable. But in  
18 order to bring in more academic researchers who could build on the BJS  
19 data, you might need to create a policymaker- and practitioner-level  
20 demand for what researchers can produce.

21 It seems to me there's a role for BJS here—probably working  
22 with NIJ, with JISA, and other organizations—to build back constituency  
23 by demonstrating how that statistical data really can be used—finding  
24 some examples of where and how. Probably the area in which we're most  
25 lacking is in the courts because I think the police actually have done  
26 much better than folks in the courts have in using statistical data and  
27 empirical research.

28 So, I would say, BJS, think about how you can expand your  
29 constituency group, both in the design of what you're doing and in the  
30 utilization of the products, and I'd be interested in anybody's response.

31 The ideas I've heard from everyone on the panel are good. How  
32 do you set the priorities? How do you engage the range of people you  
33 need to have engaged?

34 **Mr. Eisenberg:** Addressing the limited resources of BJS and others'  
35 problem—some samples are very useful, even if they're not done every  
36 year. (We live with the Census every 10 years, with some inter-essential  
37 information.) I don't know the answer. What would be the costs and  
38 benefits of a National Crime Victimization Survey done in greater depth  
39 every other year? It seems me to the long-term trends would be the same  
40 and maybe with some of that saving, we could do a better job in the years  
41 we do it and maybe add some civil components every other year as well.

42 We don't need it every year. If you look at what the National  
43 Center for State Courts and BJS have done on trial outcomes, they've  
44 been getting it every 5 years and it's wonderful. Maybe 5 years is too  
45 long for many processes, but I'm not sure every year is necessary.

46 **Mr. Schauffler:** I think your point is well taken, that whether it's this  
47 work or the Victimization Survey, we have to ask the question, how  
48 much of a load can this particular project carry, and what's its purpose?

49 Is it to document unreported crime? Is it to explore why people

1 are victimized? Is it to explore the effect of being victimized on those  
2 people? There are many different important dimensions to that, and I  
3 guess the question is: what is each one of these things we do trying to do?

4 I don't disagree with you, but I think BJS's role is to create this  
5 layer of as thick as possible description of these different landscapes,  
6 which then set the stage for other more detailed studies.

7 I think it's one of the things we've tried to do. There are certain  
8 things that can only be answered at the local jurisdictional level, I  
9 wouldn't disagree. But then the cost of doing that is high, relatively  
10 speaking.

11 We've been developing what we call the State Court Guide to  
12 Statistical Reporting which contains things like definitions of case types,  
13 definitions of what a jury trial is or a bench trial and when you start  
14 counting, whether you have one or not, and all of those really nitty-gritty  
15 classification and counting rules, trying to work with technology vendors  
16 to implement those rules through their systems. Because until we do that,  
17 so much of our effort is taking this national data and really trying to  
18 figure out, of the 50 states that say this is their juvenile delinquency  
19 caseload, which of them are really counting the same things?

20 We need to get to a more normalized situation where the right  
21 things are in the right buckets, but I think there's another big issue that  
22 you've raised and it raises a good question about what role different  
23 players have in this. If you're talking about the utilization of this kind of  
24 information to manage the courts, let's say, we focus a tremendous  
25 amount of effort on getting the data, sorting it out, cleaning it, organizing  
26 it, reflecting it back in visual displays of information that make some  
27 sense, and then we say, "Here." And we get this blank look and the  
28 judges or the court administrator or the state court administrator are  
29 looking at us and saying, "What is this telling me? I have 5 minutes.  
30 What's this telling me? What do I walk into that room and tell my chief  
31 justice this means?"

32 Then you realize you're confronting decades of managing  
33 without that information, and you're transforming the whole management  
34 culture into one which is supposed to know, "if your clearance rate  
35 diverged like this, what are the 10 things that you should ask yourself?"

36 Tom Frazier referred earlier to the need for the end user of this  
37 data to have templates and tools and ways to use data and present it and  
38 report it that are interpretable. This kind of "dashboard," which is a  
39 metaphor I really don't like but I'll use anyway, "a high-level executive  
40 dashboard" of management information.

41 Someone, some group of people and entities need to be working  
42 on this together and trying to figure out what works. So there's an  
43 interesting question: Is there a BJS role in that, or is that some other set  
44 of actors for creating the user interface, you might say, to all that data?

45 **Mr. O'Donnell:** Good afternoon. My name is Patrick O'Donnell. I'm  
46 with the California Administrative Office of the Courts, and I staff the  
47 Civil Justice Center there.

48 Let me begin by saying I really support the proposal today for  
49 the Civil Justice Survey, and before I jump in, sort of joining the chorus

1 of people who want to drill down and have practical stuff, I also want to  
2 say a word about the existing Civil Justice Survey that goes on every 5  
3 years.

4 I think that's been very useful. In some of the work we do, to be  
5 able to say this is the trend, this is what's available nationally, this is  
6 what's happening in terms of the amount of trials or the amount of  
7 judgments or what's happening with punitive damages, it's very useful to  
8 have that kind of information.

9 Indeed, if anything, I would say it would be good to have even  
10 more information along those lines, such as what's happening with class  
11 actions and other information about smaller counties. So, there's a range  
12 of information there, but it's important to have those kinds of long-term  
13 trends and eventually, even though I know this is a little bit slow, you'll  
14 also discover changes in trends.

15 I had a call from a judge last week and he said, "Are you  
16 noticing that civil cases are going up now?" I said, "No." He said, "Well,  
17 they are in my court." So, there may be changes from the long-term  
18 trend—or not.

19 Anyway, having said that, then let me talk now about the  
20 discussion today. I think it really is important to drill down and some of  
21 the drilling down people have mentioned includes getting to the county  
22 level.

23 Why the county level? Because that's where the actual one  
24 court's practice is different or one county's practice is different from  
25 another. You can, therefore, make useful comparisons. So, if the data are  
26 too aggregate—of national or metropolitan statistical area level—they  
27 often are not useful for those who are trying to evaluate how well a  
28 program in a particular county is happening versus another.

29 Another thing that was mentioned today is that it's important to  
30 capture new categories of activity. Obviously elder abuse. I work in staff  
31 on a working group on protective orders and there's certainly been a  
32 growth. And in California, there's a civil cause of action and protective  
33 order relief in elder abuse, workplace violence, and domestic violence,  
34 and those are civil matters as well as criminal. And it's important to have  
35 data in those areas which have not traditionally been captured.

36 Also mentioned was family law. Certainly the more data  
37 available, the more helpful it is, especially for seeing kinds of growth  
38 trends and new types of incidents that lead to different areas that we need  
39 to look at and focus on from a policy point of view. And then we can ask  
40 more questions about those as we collect the data.

41 Let me make two other final points. One has to do with an  
42 implicit model cited in Professor Eisenberg's article, the old Curran and  
43 Miller-Sarat Model. It seems funny talking about this as somebody from  
44 the court, but it seemed rather old-fashioned and traditional. I think it was  
45 being mentioned earlier, to have an adjudicatory model that essentially  
46 collects information and data based on claims and they morph into formal  
47 legal claims.

48 Many of the things we do now never get to the legal system  
49 because of contractual arbitration agreements, because of other ways

1 they're diverted before they get to the courts and so we have to look at  
2 that.

3 When they do get to the courts (that's sort of the step 1 to 2 in  
4 the model) a lot happens there in courts: things go away, and we need to  
5 understand why they go away, and then when they get to the courts,  
6 again 90 percent of everything goes away.

7 Well, how much of that is because of effective settlement, use of  
8 ADR? Is ADR and mediation being used extensively by the Courts? Is it  
9 a good and effective device? How do we evaluate those?

10 So, certainly in California, we've spent a lot of effort trying to  
11 look at pilot projects and how they work and so forth. So that's  
12 important.

13 I think the model really has to be a little different than the model  
14 of 25 years ago. We have to really understand all the different things that  
15 happen in terms of case management, ADR, and so forth.

16 The final point I'd make is, I think maybe another way to come  
17 at what the courts might need is more conceptual.

18 One of the things courts are looking at now is access. And that  
19 may involve things like understanding the proportion of the population  
20 whose primary language is not English. It may involve the costs of the  
21 litigation. It may involve the possibility that there are simply no legal  
22 services available but maybe, with unbundling and so forth, more people  
23 can have access.

24 So, there's a range of access issues that certainly need to be  
25 studied to understand which programs are working and how well. And  
26 where they're not working, do we need to provide more interpreters? If  
27 we're going to do that, at what costs, those kind of issues.

28 The second issue beyond access is performance. How is the  
29 system—as it is—sort of moving people through not just adjudication but  
30 through this court system? Is it working for them? Are there unnecessary  
31 delays? Is the system effectively getting them to the right ADR or  
32 settlement program? Is there assistance in, for example, a civil  
33 harassment case where attorneys can help the judge work out, negotiate  
34 certain things that could help the parties work out an agreement or  
35 something?

36 There are ranges of kinds of activities in the process, as well as  
37 the trial process itself, and finally, there are post-adjudication issues that  
38 have often been ignored.

39 I'll give two examples. As I say, I work in the area of protective  
40 orders. How effectively are those protective orders entered into the  
41 criminal justice system out there? Are they readily available? Do law  
42 enforcement [officials] know what's there?

43 On the civil side, if you get a small claims judgment, does the  
44 small claims litigant have any ability to figure out how to collect on that  
45 judgment? And who's going to provide that somewhere in the system?

46 So, those are the kind of issues that I think civil justice really

needs to be addressing. We certainly need lots of empirical information and also some thinking about what kind of studies should be undertaken and realizing this is a matter of limited resources. Some of these are long-term projects but you've got to start somewhere.

Thank you.

**Mr. Schauffler:** Your comment brings to mind one thing. I was focusing on the sort of household-level stuff outside the courts which might tell us about ADR that never makes it. But even within the courts, it's still surprising what we don't know.

We all agree that settlement is the dominant outcome for many things, but for most places and most times, we have no idea of the settlement rate. The National Center did a study in 1992 where you actually could get some useful settlement rates, but other than that, there's very little research, so when people say that 80 percent or 90 percent of the cases settle, they have no idea.

Actually, when I've looked intensely, drilled down within federal courts, the settlement rate in employment discrimination is maybe 50 percent compared to maybe 70 percent in tort. And it's sort of amazing, we have no information about the modal outcome of litigation.

**Mr. Cohen:** I think part of the challenge is also linking these different pieces up. For example, you raised the point about post-adjudication activity which is largely invisible.

Do court orders get enforced? Whose job it is to know that? Does the information flow in the right direction to allow someone to know that? But someone's compliance with court orders also has to do with its use of access and fairness.

So, to the degree that the process is perceived as fair, Tom Tyler's research has shown it's not just an issue of "it's a nice day in court when it looks fair," it's that the person who perceived that will keep paying their child support even if they "lost" longer than the person who won and had a bad process.

And there's this huge disconnect in the courts between a focus on outcomes—where typically judges and attorneys think, "well, if you get the right outcome, the process sort of doesn't matter," and all of the research which shows that, for litigants, it's really about the process. Everybody doesn't expect to win. They do expect to be treated fairly and with respect and so on.

So, somehow it's connecting up this kind of research on the legal process itself and as Don was talking about, it used to be perceived that there was nothing to study because it was simply once something got there, there was a linear rule-bound process that you went from point A to point L and it was over.

Well, that was never true. But to the degree that it was true, it's far less true now because it's more of an issue that this is a dispute. What's the appropriate way to resolve it, through therapeutic justice, restorative justice, collaborative justice—all of these different modes of adjudication and sanctions that are highly variable and which is creating a big split in the judicial world—there's sort of a paradigm crisis.

1 Are we here doing legal work or are we doing social work (to  
2 put it crudely)? There's a lot of debate back and forth about that—  
3 revolving around questions of effect, I guess, as well.

4 What courts want to be able to do is compare the efficacy of  
5 these different ways of doing business rather than have these very sterile  
6 arguments that are just opinion. "It works." "No, it doesn't." "Well, I  
7 know it does." "Well, I know it doesn't." "It's too expensive." "No, it's  
8 not." Then everybody goes off and does whatever they do.

9 There's a higher order of discourse I think we could get to with  
10 some better information.

11 **Mr. Goodnow:** I think your framework of access issues and performance  
12 issues is a useful structure to consider much of what's been discussed  
13 here today, in the morning as well.

14 As for post-adjudication matters, anybody working in the trial  
15 courts knows that that's a huge part of what we do and it is largely  
16 neglected. It's a significant unmet area we know very little about.

17 **Mr. Cohen:** Just to add one comment. We do have a study state court  
18 organization which looks at the organizational structure of state courts,  
19 but we've never looked at access to state courts. So, there might be a way  
20 to marry the two different concepts together and, again, piggybacking off  
21 the comments of guardianship, most of our civil studies have looked at  
22 tort, contract, and real property and that's it.

23 So, it looks like there might be some interest in trying to go  
24 beyond those big three case types.

25 **Ms. Waters:** I'm Nicole Waters from the National Center for State  
26 Courts, and I think that the ideas that have been shared already are great  
27 and I would back all of them.

28 I just have a couple more ideas that I wanted to share. One is: if  
29 we think about the courts and what is the purpose of the courts, it's really  
30 to serve the public. And one part of the citizenship that has to have a buy-  
31 in to the courts—they have to have this, what we call in the court world  
32 "public trust and confidence," is the jurors.

33 When they're the ones who are coming in to the courts and  
34 they're not defendants, they're not witnesses, they're not litigants in any  
35 way but they're also accessing the courts and coming into the courts as  
36 jurors serving on duty or whether they're being selected or not is where I  
37 want to go with this.

38 We have conducted something called a state of the states jury  
39 improvement efforts study that was done a couple of years ago and it was  
40 mostly funded through private foundations and private contributions and  
41 it would be really nice to see this done on a larger scale, to really look at  
42 some of the efficiency issues with juries.

43 Are the people who are coming into the courthouse, are they  
44 really being effectively used? There's this utility in not having them sit  
45 around and waste their time. I'm sure most of you have tried to get out of  
46 jury duty or heard of somebody who tried to get out of jury duty at some  
47 point, but also having representative juries.

1 We've created some different measures through our court tools,  
2 but we really don't have a sense of whether or not the courts can even  
3 measure this [jury efficiency], much less how they [courts] compare to  
4 one another.

5 Oftentimes the courts want to compare themselves to their like  
6 peers or to some national standards and we really don't have standards  
7 developed for a lot of the jury measures.

8 On another unrelated note, I want to piggyback on what both  
9 Ted and Richard have mentioned before: we've really had a problem  
10 with getting the data out there to the users.

11 We talk about this as being the Data Users Group (which is a  
12 wonderful group to bring together) but I think that we're missing a little  
13 piece of that pie which is the fact that there are a lot of other folks out  
14 there who'd like access to the data, but who do not understand statistical  
15 analysis. They are not researchers, not trained in this, so what are they  
16 going to do when they don't have the data? They're going to go wherever  
17 the data is, whether it's quality data or not.

18 Some examples of that. Jury verdict reporter data is accessible—  
19 the media can get access to this. Senators and congressmen have used  
20 this information in their speeches, to make policy decisions. Attorneys  
21 use these to try to weigh their particular clients' issues and how much to  
22 settle for, and a lot of that data is just simply being used because it's  
23 available and it's accessible.

24 So, I would urge BJS to consider how we can make our data  
25 more usable and how to make it user friendly. We certainly have it  
26 accessible in terms of the reports and we have the SPSS, for instance,  
27 available through ICPSR, but what we don't have is something that's real  
28 simple, like a query, where you can dial in and not have a lot of  
29 background knowledge about the statistics, but we can set up some of  
30 those restrictions within the query database to be able to access this.

31 Ted actually had (on his Cornell website) long ago some of the  
32 civil data from years past, some of these projects from years past, and I  
33 would love to be able to see some of those trends where we could put this  
34 together in multiple years, lots of data, and just be able to kind of  
35 embrace the new technology that the society is going into and that is this  
36 quick access to data.

37 If we can restrict it and allow them to have access to do queries  
38 online, I think that would be a really valuable tool, to use the data that we  
39 have in the past as well as to upload data in a more quick fashion, so that  
40 people can have a chance to react instead of waiting a couple of years  
41 and then having to find a statistician to interpret the data.

42 **Mr. Eisenberg:** One thing, Nicole. The website I used to have it's still  
43 up there, but it had both the federal administrative office data and one of  
44 the National Center studies. That is being migrated to Wash U. at St.  
45 Louis, but it's taken about 2 years, and it's not up yet.

46 They are very enthusiastic about doing it and I'm sure it will  
47 look much slicker than what I did and so people recognize the value of  
48 that quick ability to formulate a query for the large datasets.

1 One other thought that your comments triggered is on the  
2 consumers of the data and users, and I think here, my part of the world  
3 has a lot of deficiency. The law schools. A lot of this is law-related, right,  
4 and it sometimes takes legal education or at least legal knowledge to  
5 interpret even what we're talking about and the law schools sort of, I  
6 think in general, fail miserably in requiring law-trained people who might  
7 be the Congressmen and the like of the future to get any training at all in  
8 evidence-based law making, for example, that we don't require anything  
9 on data analysis or even understanding what it is.

10 I think the law schools could do a better job of requiring future  
11 lawyers to actually be able to read data and interpret it—be intelligent  
12 consumers.

13 **Mr. Goodnow:** I think Nicole makes a great suggestion about studying  
14 jurors. They are the foundation of our fact-finding system and we know  
15 very little about their experience or our experience with them.

16 **Ms. McLaughlin:** Hello. I'm Karen McLaughlin. I'm Director of the  
17 Massachusetts Human Trafficking Task Force.

18 I wanted to echo what Steve Derene and a few other people have  
19 commented about regarding lapses in education about using data.

20 I see the crime data, the National Victimization Survey, and the  
21 other things that BJS is doing completely misrepresented in the media.  
22 People quote the figures and don't have any idea of what they're really  
23 saying.

24 I've been educated, I think, by BJS in the last several years  
25 working on hate crime data and more recently on trafficking data. Also,  
26 we were visited by people from BJS to look at Boston as one of 18 cities  
27 that were looked at in terms of crime rates this year.

28 So, I feel like we've had a great education on specialized  
29 victims issues and broadly on what's happening with crime issues in our  
30 city, and I think that I just have to share the same concerns that Steve  
31 Derene raised.

32 I think our community of victim assistance providers is really  
33 very poorly educated on this, and I think it's also a combination of trying  
34 to grasp what—they are trying to serve all these new victim categories as  
35 they sort of become more a part of the public policy debate, child abuse,  
36 rape, domestic violence, vehicular homicide.

37 It just goes on and on, and I think they're asked to be specialists  
38 in these other areas and learn about what's happening with data in these  
39 other areas and it's just very, very difficult.

40 There are a lot of victim assistance organizations here, national  
41 and otherwise. I think we're usually in town in Washington for Victim  
42 Rights Week and during the month of April. I think that would be a fine  
43 time to try to coordinate.

44 I know we have no money to do anything, but I would love to  
45 see even a small group of people continue on, and I'm also very  
46 concerned, seeing the budget the way it is. And \$2 million for BJS, as we  
47 were saying earlier, is just a pittance.

1 I look at what we're doing internationally with other  
2 governments and this organization, this agency, can't possibly meet the  
3 mandates of what is on their plate right now.

4 So, I'm just wondering—before we all leave here today—what  
5 are our next steps? I think if we don't have a plan, we will have  
6 generated a lot of good ideas for nothing.

7 I think the other sort of approach may be that when we're  
8 looking at design issues and looking at when the data is released in the  
9 National Victimization Survey or whatever, to bring people back in, to  
10 have focus groups, to work with even a small cadre of people to work  
11 together on the civil and criminal justice side. I'd like to see a little more  
12 intersection between those issues and we referenced that earlier in the  
13 panel and I think that's really an important area where they intersect.

14 I want to thank everybody for their time and thank BJS for  
15 having the innovation to do this.

16 **Mr. Schauffler:** I'll leave 'next steps' to BJS, but I think you're right. In  
17 today's information-saturated world, the true value-added for people who  
18 analyze data is the ability to present it in an intelligible form to a non-  
19 technical audience.

20 I don't know how to say it any clearer. There's the whole art and  
21 science of information design and the way to make the data tell a story.  
22 There's the saying, "data doesn't speak unless spoken to." You don't get  
23 speech by looking at rows and columns. You get it by looking at pictures.  
24 That expectation is being set over and over again everywhere else people  
25 experience things and so we're no different. The expectation is, well,  
26 show me something. Netflix can do it, Amazon can do it.  
27 The Pew Research—Pew website does a nice job of taking little  
28 information graphics and showing them to people. So, why can't you do  
29 that? And we have to be able to.

30 Our support from BJS allows us to spend almost as much time  
31 doing that with the caseload data that we get as we do collecting the data  
32 in the first place, because if you don't do that, then it kind of doesn't  
33 matter that it's there, and we struggle still with trying to find the  
34 reasonable small set of interpretable graphics for some of these  
35 fundamental management issues for busy non-technical people and that's  
36 just ongoing work.

37 But I think you're right. Sharing strategies for that would be  
38 useful.

39 **Mr. Lynch:** I'm sorry. I didn't want to be outdone by Brian. So, I  
40 thought I'd speak.

41 I have a question for Professor Eisenberg. It's interesting that,  
42 when you gave your presentation, you talked about a household-based  
43 data collection. And all the discussants really started talking about the  
44 courts afterwards. I think that in addition to Barbara Curran's work in  
45 1997, there was another one you left out that was done by Temple  
46 University, by the ABA, which I haven't seen any reports from but I  
47 know was fielded.

48 You have a private group that's interested in this data, as well.

1 So my question is: is this household-based data collection really  
2 essential? Because this civil justice system is largely private. Two  
3 individuals disagree about something and when they bring it to the court,  
4 it becomes public. And then we have a group of statistics that attempt to  
5 monitor that once it's public.

6 On the victimization side, the police intervene quite early and  
7 one of the reasons for a victimization survey is people wanted to monitor  
8 that public service.

9 So, because it's largely private and because there is a group that  
10 is interested in these data, why not leave it up to the ABA? Why should it  
11 become a permanent feature of BJS to collect this kind of information?

12 **Mr. Eisenberg:** I think if the ABA did it regularly, that would be a great  
13 answer. The study I quoted was from 1977.

14 **Mr. Lynch:** The other one was from the early '90s.

15 **Mr. Eisenberg:** Okay. So, is every 15 years enough? And they don't  
16 have a common methodology. They don't have the resources to do it  
17 more often. They're way too small to get any kind of demographic, really  
18 good demographic breakdown—and other problems.

19 On the public-private, I guess it seems to me largely an artificial  
20 line. If we think the court system supplies a public service and we want  
21 to take it from the perspective of the court system, then one could say,  
22 well, even to understand the court system, we have to understand the  
23 universe of disputes that are not making it into the court system.

24 **Mr. Lynch:** Well, shouldn't we be—you could also say we rely on the  
25 ABA, too.

26 **Mr. Eisenberg:** Yes, that would be valuable. I agree. I'd be happy if  
27 someone else took it up, but what happens—including people like me—is  
28 we crank up once a decade to study something and we go forward.

29 One thing the government supplies is sort of an institutional  
30 infrastructure that's permanent, that will keep doing it, or I guess I could  
31 put it another way.

32 Think about law: Is it important in society? I think law is a  
33 distinct aspect of society that interacts with many other aspects of  
34 society. but I would say government should strive to supply at least as  
35 much information about the legal system, both disputes that make it to  
36 court and not, as we do, say, about the economic system.

37 We almost gag at the notion of the government not keeping  
38 track of inflation or the rate of bank loans or the rate of defaults on  
39 mortgages or unemployment or all those other things. I don't know why  
40 we don't gag at the notion that we don't have similar information about  
41 the legal system and it seems to me it's a real gap in our knowledge about  
42 society.

43 There are more economists than law professors, maybe.

44 **Mr. Schauffler:** I guess I would challenge the notion of this public-  
45 private distinction in a couple of other ways.

1 In the first instance, when people come to court, they're making  
2 use of public resources. So, the old paradigm was this is a private  
3 dispute. You tell us when you're ready. You come into court and say  
4 you're not ready, we'll say thank you, just let us know when you are, and  
5 if you have to come back 48 times before you're ready, no problem.  
6 We'll pull that file 48 times, we'll summon juries, we'll do all that stuff,  
7 but if you're not ready, you're in charge. And that was the old "the  
8 lawyers are in charge" paradigm.

9 I think courts went through a big shift, realizing that we're  
10 stewards of public resources. We have a responsibility to make sure these  
11 cases are adjudicated in an efficient and effective manner—on top of  
12 which, you have the whole development of case law in our legal system.

13 Those civil cases are a public good because they create the  
14 statutory framework that persists going forward. So, for that reason, also,  
15 it's of great concern how those cases are adjudicated.

16 **Mr. Goodnow:** I would just echo the other two comments. I think it's a  
17 fundamental role of government to provide a public dispute resolution  
18 forum, and to simply relegate that to the private sector would be a huge  
19 change in our society and, I think, problematic.

20 **Mr. Cohen:** Just to add one thing. We've only looked at trial court  
21 outcomes because those are the outcomes that are most easily accessible  
22 to the public. It's very difficult to get information on outcomes that end  
23 in a settlement.

24 Typically a settlement outcome's not reported to the courts at  
25 all, and so that's why the vast majority of our civil research really has  
26 focused on those trials, to the exclusion of other dispositions.

27 **Mr. Davies:** Hi. I'm Mark Davies. I'm from the New Jersey  
28 Administrative Office of the Courts, and mostly, I just wanted to let you  
29 know that when you're initially making your comments, I had a list of  
30 things that I was hoping that would be addressed and you hit on a lot of  
31 them. I just wanted to affirm that the ideas of getting information about  
32 self-representation, information about access—as far as language goes,  
33 and getting information about time goals is pretty important.

34 We're looking at time goals right now. We rely on taking a look  
35 at the court rules, and what our discovery rules are, and how long we can  
36 reasonably expect things to take, but we are not really getting a public  
37 view as to what the expectations are, and how that is affecting our filing  
38 rates are. Maybe if the expectations don't meet what the court can  
39 provide, maybe we aren't even reaching it.

40 The other thing. You can put up subprime as just kind of an  
41 example of how it affects society and at least in New Jersey, we can't tie  
42 it necessarily to subprime, but somebody else also mentioned the civil  
43 filings going up.

44 In New Jersey, we have a million filings, and over 600,000 of  
45 them are either civil or special civil under \$15,000. In the first 6 months  
46 of this court year, we're seeing a 15 percent rise in the cases that are  
47 under \$15,000. In particular, contract cases under \$15,000—which are  
48 basically the debt cases that are being collected—are up 30 percent, and  
49 we're assuming that that's partly to do with what's happening in the

economy and the sub prime. So the effect on the rest of what's happening is quite important.

**Mr. Goodnow:** I think your addition of the public view of what is timely and what is not is a great addition to the ABA and Conference of State Court Administrator standards for timeliness in courts. Because I suspect those standards (both developed several years ago) had too little input from the public. I think that's a great addition.

**Mr. Schauffler:** As an example of the kind of expectation-setting that's going on, many courts now have online payment or online checking of the docket or online traffic school. But interestingly enough, in the U.K., there's a form of small debt dispute resolution which is essentially online negotiation.

People are just talking to each other through the court's web interface and negotiating back and forth. So no one wants to go to court. That's the premise. That's a big waste of time. So, let's figure out this other way to just get a conversation started that's cheap. I can do it at midnight in my bathrobe and I can get it over with. When you do the math on the economics of collecting those debts, you owe me \$1000 and I collect \$700 and I'm good—because I'm going to spend a lot more than that to get it.

So, these notions of public expectations are also part of what courts [consider]. And this is a real shift in behavior at this end of the litigation spectrum, which is (in volume) huge.

**Mr. Greene:** Steve Greene. In reading the paper, I was struck by the almost arbitrary nature of the distinction that we're drawing between the civil and the criminal, which is usually a function of what gets passed in the legislature.

I think back to the Tylenol incident where all of a sudden, product tampering became a crime. What really is the distinction? Particularly in the notion of looking at our justice system as a dispute resolution mechanism, it seems to me that there's another player available which may or may not be appropriate to study.

It's another item to stuff in the knapsack, I guess. My background is at the state level—particularly in administrative regulatory areas—and so you have a whole realm of access to worker's comp, crime victim's comp, and medical malpractice compensation programs at the state level. There's a Federal Vaccine Injuries Compensation.

My city has a cable TV complaint guide I can call. So, it just seems to me there's a whole spectrum of areas where government can help fulfill that function. It's another form of alternative dispute resolution that keeps it out of the courts in most cases, although there's probably a right to appeal to the courts.

So, I just wanted to fill that in. If you're looking at a wide spectrum of what we need to know about helping people resolve complaints, that's another sector, I think, that's been overlooked. I don't know if you have any thoughts about that.

**Mr. Schauffler:** One of the ways that we've tried to approach the issue of performance measurement in courts at the National Center is to

1 promote the idea that you're trying to evaluate the performance of the  
2 entire organization (which suggests, based on a few fundamental notions,  
3 that all management decisions are trade-offs). So if you're going to go a  
4 little slower to raise public satisfaction, you have to figure out where the  
5 trade-off is that makes sense there. Or if you're going to take resources  
6 out of the civil side in order to move the criminal cases and slow down  
7 the civil, then you have to balance—make transparent that you're making  
8 trade-offs and evaluate and measure the results of them. So, in that sense,  
9 knowing that the civil time to disposition and the criminal time to  
10 disposition in the court is mostly relevant insofar as it tells you how  
11 you're doing at balancing the resources.

12 The civil division can't succeed at the expense of the criminal  
13 division, but this is again a big shift in the mentality of the staff and  
14 judicial officers doing those cases. They have been trained to think of  
15 themselves as experts in the thing they do—with juvenile delinquency,  
16 domestic relations cases, or whatever it is—and the idea is that you're not  
17 trying to evaluate them individually but you're trying to get them to  
18 participate in an exercise of managing the court. And operating  
19 collectively is a huge part of the shift.

20 But I think you're right. These distinctions—especially now  
21 when the courts are also involved in the business on the family side of  
22 trying to bring all these cases together.

23 So, let's say mom and dad are getting a divorce and the kid has  
24 a delinquency case and there's a civil judgment going against them. The  
25 idea is one judge, one family trying to rein this in to reduce the  
26 probability of conflicting judicial orders in these different cases, which  
27 would just set the path for failure along the trajectory of these cases. So  
28 they can coordinate these responses, which makes the point you're  
29 making in a different form.

30 **Ms. McLaughlin:** Just to carry on this discussion of the civil-criminal  
31 interface—because it's true, there are many people here that are  
32 interested primarily in criminal matters and to bring up the civil matters  
33 opens up a whole interesting new way of looking at things.

34 I looked at the victimization discussion earlier in the afternoon.  
35 I'd just like to point out that there was a lot of police bashing going on  
36 there, on the assumption that victims don't report their victimizations and  
37 what can we do to find out why they're not doing it, and they must not be  
38 reporting because they know the police will not be responsive.

39 What the civil side tells us is wait a minute, maybe victims  
40 aren't reporting not because they're upset at the police but because they  
41 have other alternatives for dealing with their victimizations. For instance,  
42 civil justice. For instance, compensation boards. For instance, family  
43 court. All kinds of different tools that courts can provide that are real  
44 options for victims and so the point is, that we don't know.

45 We just don't know what victims are doing instead of reporting  
46 to the police. Are they doing this? I would predict they are, but how  
47 would we know? I guess BJS will find out for us.

48 Another point. This is more of a statement than a question. Hold  
49 on to that question. My statement is I wanted to just thank Professor  
50 Eisenberg for pointing out to us that in the crime-civil interface, we don't

1 study white collar crime.

2 When we talk about crime, we have to remember white collar  
3 crime is really important, and the effects of white collar crime are  
4 monstrous. Now, with crime statistics, generally we're still thinking of  
5 the UCR or the National Crime Victim Survey.

6 A way to get at white collar crime is to look at civil litigation  
7 and the whole tort liability structure. You say, well, that's not crime. To  
8 the victims, it might be. It doesn't matter what you call it. There's been a  
9 victimization.

10 So, my statement is that if people want to talk about being  
11 criminologists and they want to study white collar crime, this is the way  
12 perhaps to do it, but back to my question.

13 How would we know whether the victims are turning to the  
14 courts?

15 **Mr. Schauffler:** How do we know if the victims of crime are turning to  
16 the civil justice system?

17 **Mr. Eisenberg:** We need to ask them.

18 **Mr. Schauffler:** I don't think we know. I think that's sort of the premise  
19 of Ted's proposal: until you ask that question, you don't know what  
20 people are doing. and as to the other one of using the notion of white-  
21 collar crime and torts interchangeably, I've taken enough risk [on] a  
22 prosecutor issue—I'm not going there.

23 **Mr. Eisenberg:** I think that the line between civil and criminal is really  
24 important. When did identity theft become a crime? Presumably when it  
25 was bothering enough people that public policymakers got involved.

26 Crimes, except for the old common law-type crimes, don't just  
27 spill down upon us from heaven. We've defined them, and one way to  
28 consider whether we're making criminal the right things is finding out  
29 what people view themselves as victimized by. So maybe some of the  
30 things that are criminal should be made so, and some of the things that  
31 are shouldn't be made so—depending on how people are feeling.

32 **Mr. Cohen:** And entering court data collections would never show if  
33 these two subject areas are intermingling in any way. So something to  
34 think about in the future.

35 **Ms. McLaughlin:** Regarding your point about what's going on with  
36 victims: I was involved in a national survey, (I hesitate to say it was in  
37 1975, but it was the first one where we were really looking at how many  
38 victims were so-called defaulting from the system) and we discovered  
39 that they were, as they were thought to be at that time, non-cooperative  
40 throughout the whole process.

41 When we interviewed them (it was a major survey in  
42 Wisconsin—I'm happy to give people the data, I think it's still relevant  
43 today) they said that the police were the least problematic, that they felt  
44 that there was a lack of sensitivity on the part of the prosecutors, but they  
45 weren't nearly as bad as the courts.

1 So, they attacked judges. That level [of dissatisfaction] was the  
2 highest of all three—criminal judges. There really wasn't a piece on the  
3 civil side. There were a few questions that related to alternative dispute  
4 resolution and things like that, but nothing elaborate on the [civil side]  
5 much more on the criminal side. But I think it really shook our notions of  
6 why people were not coming forward.

7 The other reason people said they weren't coming forward is  
8 that they didn't see themselves as a crime victim and even after being  
9 adjudicated a crime victim, some people said I don't self-identify as a  
10 crime victim.

11 It's what we were saying earlier about the status as one sees  
12 themselves as being opposed to what the courts might decide, what the  
13 charge is, what the arrest is, anything that the court system's doing.

14 I think it's a real education process for victims to then believe  
15 that in the final analysis, they were a victim. We had stalking cases and  
16 people had no reference for what stalking actually is. Did they report that  
17 crime? No, but they were on repeated charges of assaults later and they  
18 didn't think stalking was a crime—and at that point, it really wasn't  
19 identified as a crime in terms of how we think of it now with enhanced  
20 penalties and various other things.

21 So, I think it's much more complex, and we have all those  
22 instruments should you want to see them. We asked a lot of questions  
23 about the courts.

24 **Mr. Cohen:** Well, I think this ends our Courts and Adjudications part of  
25 the Data Users Workshop. Thank you very much. It was a great  
26 discussion. I certainly learned a lot, and I'm going to take what I learned  
27 back to BJS and go from there.

28 I think we turn the forum over to Mr. Allen Beck.

## 29 What BJS Has Learned and Next Steps

30 **Mr. Beck:** Well, I have the task of saying what we learned and what our  
31 next steps are, and that certainly is a challenging task, but let me say this  
32 has been a great day for BJS, and I hope you all feel similarly.

33 I think we got our money's worth in terms of putting together  
34 this day. I must say it feels good to think big. It feels good to entertain  
35 the array of options that perhaps we haven't entertained in the past (and  
36 need to as we push forward in the future) and so we really have a  
37 richness of ideas and recommendations and so the challenge now is to  
38 sort all this out and determine what we do with these competing demands  
39 and recommendations.

40 Obviously BJS is very fortunate in that we have the CN STAT  
41 panel. The members are here today and certainly part of their challenge is  
42 to help us sort this out, to kind of guide BJS into the future, provide  
43 recommendations as to where we should go and perhaps how we should  
44 do it, and I emphasize the "how we should do it" a little more than simply  
45 the recommendations.

46 So, insofar as the CN STAT panel can fulfill that for us, we will  
47 take it. We'll take their advice, but, of course, we're not going to sit still

1 in the meantime while the panel does its work.

2 I'd like to talk a bit about the next steps. The obvious one is to  
3 keep talking. The obvious one is to keep talking to the users, to the  
4 practitioners, to the data providers, to the policymakers, to really have a  
5 more robust and active engagement of the entire set of stakeholders that  
6 we have relative to BJS, and this is a great opportunity.

7 This is the first meeting but not the last. Obviously we can't do  
8 this every month or perhaps every year, but we certainly understand the  
9 principles of engagement.

10 We obviously need to integrate our users into the development  
11 of our surveys, and let me say quite honestly we haven't done that in the  
12 past. We haven't done that as fully and necessarily as we need to. So, we  
13 really truly need to reach out in the process of reviewing our surveys. We  
14 need to reach out to the users, but earlier than that, I think we need to  
15 reach out to all the stakeholders as we develop the surveys themselves.  
16 So that may mean we rely on focus groups or advisory groups.

17 Let me say that BJS does not have a strong history of relying on  
18 focus groups or advisory groups, but I think the world is changing. The  
19 world of information is changing and certainly the need to engage our  
20 stakeholders to better inform our work is ever present as the dollars  
21 become tighter and the competition for information increases, and so I  
22 think the call here is to engage our users and all stakeholders in that  
23 process.

24 Obviously we also need to enhance our dissemination and  
25 monitor the use of our information to better inform the analysis, and  
26 likewise, for that analysis to better inform the data collection and  
27 ultimately that data collection to be informed by our data users as well as  
28 our data providers. So, it is a very active engagement that we are setting  
29 forth.

30 A second thing I think we learned here today is that we need to  
31 find opportunities for teamwork. That is, we need to team up with  
32 researchers, practitioners, and advocates because we can't simply rely on  
33 in-house expertise to do everything, to address all issues. We really have  
34 to reach out to get that expertise. We simply do not have the capacity to  
35 expand staff nor retain staff for all purposes and to address all issues in a  
36 more precise way.

37 So, I think we need to seek opportunities for that teamwork—  
38 and there were expressions of that throughout the day—whether it be in  
39 the law enforcement area or in NCVS, or in courts.

40 The real need is to team up with researchers to more fully  
41 analyze the data, to team up with the data providers, the practitioners and  
42 advocates to better inform the data that we collect.

43 A third point is that we need to sort out priorities and that, of  
44 course, is the challenge when you have the opportunity to think big.  
45 There necessarily is restraint that one has to impose simply because  
46 although the opportunities are there, the capabilities may not be. And so  
47 in thinking this through and sitting back and listening today, I think there  
48 are some themes that have emerged as to how we do that.

1           One is to consider the BJS role, what BJS is and what BJS isn't,  
2 what it can be and what it shouldn't be and what it can't be. Obviously,  
3 BJS can't be all things to all people, can't address all issues, and this, I  
4 think, finds its expression in the law enforcement area, for one.

5           Obviously there's great tension between the data providers of  
6 UCR with analysts that may be beyond the control of the data providers  
7 and so moving UCR over to BJS is not a simple task, otherwise it  
8 probably would have been done a long time ago.

9           There are issues of ownership, there are issues of control, and so  
10 how do we overcome those issues? I think we overcome those issues by  
11 teaming up with those law enforcement agencies to show our stuff, to  
12 show that we can analyze these data and what the data speak, not let the  
13 policies that perhaps [dominate] our discussions of the day drive those  
14 analyses.

15           So, part of our ability to reach out to the law enforcement  
16 community and to enhance statistics is really about ensuring the  
17 objectivity and integrity of the data analysis and what BJS should be.

18           We have issues that are related to our leadership in the field,  
19 leadership related to providing social indicators. After all, BJS is in the  
20 business of social indicators. NIJ typically (as we define them) does  
21 research. In doing social indicators, we have—implicit in them—various  
22 definitions and counting rules. So part of our role at BJS is to provide  
23 that leadership to the law enforcement community, to the courts, to  
24 corrections, to the wider world. I think some of the conversation we had  
25 today about templates is really about that leadership—of providing that  
26 direction for definitions, for concepts, for counting rules, for procedures,  
27 things that we do pretty well, we hope we do pretty well, and certainly  
28 have some expertise in.

29           Obviously there's a great deal of tension between BJS as a  
30 national or federal statistical agency and collecting data that is in real  
31 time, that's operational, and more limited in scope; that is, small area in  
32 nature.

33           There is no tension in the sense that we provide aggregate  
34 snapshots to the social indicators of research, but the information gets  
35 more meaningful when we look at it in systems, in jurisdictions, in small  
36 areas. It becomes more interpretable and more usable and so the tension  
37 for a federal statistical agency is that national scope, that national  
38 mandate versus the need for data that's more operational, more  
39 interpretable and more usable.

40           I think we can have our cake and eat it, too. I think there's an  
41 option that we have that can address those sub-national interests to get  
42 data at a sub-national level, whether it be agency level or sub-agency  
43 level. We even heard that today. Neighborhoods. That is to think of our  
44 work in terms of national collections and supplements, national  
45 collections and panels, national collections and then jurisdiction-specific  
46 collections that may augment that national information.

47           One of the challenges is that information needs certainly outstrip  
48 the ability to measure and provide information. The requests for  
49 information come flying at us every day and the complexity is that  
50 information oftentimes is not collectible, simply isn't. It's not collectible

1 because there are no centralized standards and uniform definitions and  
2 counting rules out there.

3 We have a very complex world of criminal justice, that's a good  
4 thing, and so we try to impose comparability when there isn't. We try to  
5 collect data when oftentimes we can't and that's simply because the  
6 information infrastructure isn't there. The capacity to respond to our  
7 surveys is often very limited.

8 So, when we think about trying to make these data more useful  
9 and trying to make them more interpretable, we really have to take  
10 measurement seriously. I think the way to do that is to identify cities and  
11 agencies that are perhaps more sophisticated, that perhaps have the  
12 capacity to provide this information in comparable ways, and some of  
13 that work has to do with taking inventories of that capacity, whether it be  
14 law enforcement agencies or courts, and so we can learn the richness of  
15 what we need in areas where perhaps the measurement is more possible.  
16 But to do a complete enumeration of the 18,000 law enforcement  
17 agencies on all the dimensions we talked about today simply is not  
18 possible, nor should we do it.

19 So, we need to think about panel designs and implementing  
20 those panel designs to complement our national collections and that is  
21 one of the takeaways that I have here, one of the recommendations.  
22 People may differ on that.

23 You know, there was discussion in the law enforcement panel  
24 about the need for sub-national data and the need to drill down, and one  
25 of the surprising things is there was never a discussion of the officer  
26 perspective, the perspectives that law enforcement officers might have,  
27 and I think it's somewhat surprising.

28 We know in the law enforcement agency there are critical issues  
29 related to recruitment, retention, to the nature of the work, the challenges  
30 of law enforcement agencies, and one way to flesh out some of our  
31 understanding of that is to talk to the officers about their circumstances,  
32 their challenges, how they do their work. (I just throw that out there as  
33 something to think about.)

34 We certainly got a buffet of specialized studies today, in law  
35 enforcement, NCVS, courts, and that's a great thing. That really helps us  
36 as we think about what we might do on the cheap, what we might do that  
37 might not be quite as expensive to do as some of the other things—data  
38 on crime analysts, data on training, some specialized surveys on  
39 community needs and police satisfaction, looking at emerging issues on  
40 gangs and private sector policing—lots of richness there that I think we  
41 take from this. And we'll go back to the office and kick these ideas  
42 around a little bit. I think that's great—that's worth the day.

43 As a statistical agency, we always have the pressure of time and  
44 timeliness and there's no simple solution to timeliness, but I don't think  
45 we ever get to real-time data. Maybe some day everybody will be wired  
46 in and keying it in and we'll have the latest crime statistics the next day.

47 Of course, if we expand the array of things we collect, we  
48 should expect it to take longer, not shorter, to collect those data. If we  
49 take timeliness seriously, we have to make choices. We have to decide  
50 what we can do without, what is too burdensome, what will delay our

1 collection to enhance the timeliness and ultimately the utility.

2 So, one suggestion we have is to take the core and supplement  
3 approach in which we trim the core collection for our big collections and  
4 supplement it with the things that take a little more time to achieve  
5 greater timeliness along the way.

6 One last thing. Let me say that all of the panels were fantastic,  
7 really terrific. I feel that the time was extremely well spent.

8 One of the things I liked about the NCVS panel was it really  
9 was a call to getting back to the original intent of NCVS—to deliver on  
10 the promise of NCVS. And the promise—in my mind—is not simply  
11 about measuring level and rates and comparing those levels and rates  
12 over time, but to understand victimization and, in that understanding,  
13 understand how to reduce it and also how to be more responsive to the  
14 needs of victims.

15 That is what one of the big promises of NCVS always was, and I  
16 heard that in there, the need for greater research, the need to understand  
17 social context, and I think that gives us a good push for investing more in  
18 those kinds of analysis.

19 We need to continue this dialogue, to get real about the new age  
20 of information and we're not alone. The information world has changed.  
21 It is not that of 25 years ago when I started at BJS, and so we need to be  
22 far more engaged with our users, with our stakeholders, and to be more  
23 thoughtful about why we do things and how we do them.

24 So, thank you. Thank you so much for coming.